

No. 11656

United States
Circuit Court of Appeals

For the Ninth Circuit

RENALDO FERRARI,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

FILED

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PAUL P. O'BRIEN,

CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the Southern Division of the United States
District Court for the Northern District of
California

No. 30449-G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

VINCENT BRUNO, FRANK FLIER, SALVA-
TORE BILLECI, RENALDO FERRARI,
RICHARD BENSON, MIKE J. BILLECI,
JOHN CHRISTOPHER, JOHN ORMAN
KNIGHT, JOSEPH PITTA, SAMUEL
LOUIS COHEN, STANLEY PALIWODA,
HENRY GOURDIN, MILLARD DAVIS,
PAUL CRIVELLO, JOHN TERNULLO,
HARRY FISHER, and FRANK ARRIOLA,
Defendants.

INDICTMENT

First Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury charges: That Vincent Bruno and Renaldo Ferrari, on or about the 5th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle con-

taining approximately one dram of heroin, and the said heroin had been imported [2*] into the United States of America contrary to law, as said defendants then and there knew.

Second Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno and Salvatore Billeci, on or about the 5th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Third Count

(Harrison Narcotic Act, 26 U.S.C.,
Secs. 2553 and 2557)

The Grand Jury further charges: That Frank Flier, on or about the 6th day of January, 1946, in the City and County of San Francisco, State of California, unlawfully did sell, dispense and distribute, not in or from the original stamped package, a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin.

* Page numbering appearing at foot of page of original certified Transcript of Record.

Fourth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Millard Davis, on or about the 6th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

Fifth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Salvatore Billeci and Millard Davis, on or about the 6th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Sixth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier and Salvatore Billeci, on or about the 6th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as nine bindles containing approximately nine drams of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Seventh Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno and Frank Flier, on or about the 6th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one package containing approximately one ounce of heroin, and the said herein had been imported into the United States of America contrary to law, as said defendants then and there knew.

Eighth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges, That Vincent Bruno, on or about the 7th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

Ninth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier, on or about the 7th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

Tenth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno, on or about the 7th day of January, 1946,

in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

Eleventh Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno and Frank Flier, on or about the 8th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Twelfth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Richard Benson, on or about the 8th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal

and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

Thirteenth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno, on or about the 8th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

Fourteenth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier, on or about the 8th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described

as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

Fifteenth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier, on or about the 9th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

Sixteenth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno and Frank Flier, on or about the 9th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did [7] conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Seventeenth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier, on or about the 9th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

Eighteenth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Frank Flier and John Orman Knight, on or about the 9th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Nineteenth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno and Frank Flier, on or about the 10th day of January, 1946, in the City and County of [8] San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Twentieth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno and John Orman Knight, on or about the 10th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Twenty-First Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno and Mike J. Billeci, on or about the 10th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Twenty-Second Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno, Frank Flier and Mike J. Billeci, [9] on or about the 8th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Twenty-Third Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno and Joseph Pitta, on or about the 10th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Twenty-Fourth Count

(Jones-Miller Act, 21 U.S.C., Section 174)

The Grand Jury further charges: That Vincent Bruno, Joseph Pitta and Millard Davis, on or about the 11th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew. [10]

Twenty-fifth Count

(Jones-Miller Act, 21 U. S. C., Section 174)

The Grand Jury further charges: That Frank Flier, on or about the 11th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

Twenty-sixth Count

(Jones-Miller Act, 21 U. S. C., Section 174)

The Grand Jury further charges: That Frank Flier and John Orman Knight, on or about the 14th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Twenty-seventh Count

(Jones-Miller Act, 21 U. S. C., Section 174)

The Grand Jury further charges: That Vincent Bruno, on or about the 14th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to wit, a lot of heroin, in quantity particularly described as one bundle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

Twenty-eighth Count

(Jones-Miller Act, 21 U. S. C., Section 174)

The Grand Jury further charges: That Frank Flier and John Orman Knight, on or about the 14th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to wit, a lot of heroin, in quantity particularly described as one bundle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Twenty-ninth Count

(Jones-Miller Act, 21 U. S. C., Section 174)

The Grand Jury further charges: That Frank

Flier and John Orman Knight, on or about the 14th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Thirtieth Count

(Jones-Miller Act, 21 U. S. C., Section 174)

The Grand Jury further charges: That Frank Flier and John Christopher, on or about the 14th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Thirty-first Count

(Jones-Miller Act, 21 U. S. C., Section 174)

The Grand Jury further charges: That Vincent Bruno, on or about the 15th day of January, 1946, in the City and County of San Francisco, State of

California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

Thirty-second Count

(Jones-Miller Act, 21 U. S. C., Section 174)

The Grand Jury further charges: That John Orman Knight, on or about the 15th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

Thirty-third Count

(Jones-Miller Act, 21 U. S. C., Section 174)

The Grand Jury further charges: That Frank Flier and Harry Fisher, on or about the 15th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and

preparation of morphine, to wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Thirty-fourth Count

(Jones-Miller Act, 21 U. S. C., Section 174)

The Grand Jury further charges: That Vincent Bruno and Frank Arriola, on or about the 15th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Thirty-fifth Count

(Jones-Miller Act, 21 U. S. C., Section 174)

The Grand Jury further charges: That Vincent Bruno, Frank Flier and John Orman Knight, on or about the 16th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to wit, a

lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Thirty-sixth Count

(Jones-Miller Act, 21 U. S. C., Section 174)

The Grand Jury further charges: That Frank Flier and John Orman Knight, on or about the 17th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Thirty-seventh Count

(Jones-Miller Act, 21 U. S. C., Section 174)

The Grand Jury further charges: That Frank Flier and John Christopher, on or about the 17th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to wit, a lot of heroin, in quantity particularly described as one bindle con-

taining approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Thirty-eighth Count

(Jones-Miller Act, 21 U. S. C., Section 174)

The Grand Jury further charges: That Frank Flier and John Christopher, on or about the 17th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Thirty-ninth Count

(Jones-Miller Act, 21 U. S. C., Section 174)

The Grand Jury further charges: That Frank Flier and Renaldo Ferrari, on or about the 17th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the

said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Fortieth Count

(Jones-Miller Act, 21 U. S. C., Section 174)

The Grand Jury further charges: That Vincent Bruno, Frank Flier and Renaldo Ferrari, on or about the 28th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Forty-first Count

(Jones-Miller Act, 21 U. S. C., Section 174)

The Grand Jury further charges: That Vincent Bruno, on or about the 28th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

Forty-second Count

(Jones-Miller Act, 21 U. S. C., Section 174)

The Grand Jury further charges: That Frank Flier, on or about the 28th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

Forty-third Count

(Jones-Miller Act, 21 U. S. C., Section 174)

The Grand Jury further charges: That Frank Flier, on or about the 29th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

Forty-fourth Count

(Jones-Miller Act, 21 U. S. C., Section 174)

The Grand Jury further charges: That Frank

Flier and John Orman Knight, on or about the 30th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Forty-fifth Count

(Jones-Miller Act, 21 U. S. C., Section 174)

The Grand Jury further charges: That Frank Flier and Samuel Louis Cohen on or about the 30th day of January, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Forty-sixth Count

(Jones-Miller Act, 21 U. S. C., Section 174)

The Grand Jury further charges: That Frank Flier and John Orman Knight, on or about the 31st day of January, 1946, in the City and County of

San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Forty-seventh Count

(Jones-Miller Act, 21 U. S. C., Section 174)

The Grand Jury further charges: That Frank Flier and Stanley Paliwoda, on or about the 1st day of February, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Forty-eighth Count

(Jones-Miller Act, 21 U. S. C., Section 174)

The Grand Jury further charges: That Frank Flier, John Orman Knight and Henry Gourdin, on or about the 1st day of February, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facili-

tate the concealment of a certain quantity of a derivative and preparation of morphine, to wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Forty-ninth Count

(Jones-Miller Act, 21 U. S. C., Section 174)

The Grand Jury further charges: That Frank Flier and Henry Gourdin, on or about the 1st day of February, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Fiftieth Count

(Jones-Miller Act, 21 U. S. C., Section 174)

The Grand Jury further charges: That Frank Flier, on or about the 2nd day of February, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to

wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

Fifty-first Count

(Harrison Narcotic Act, 26 U. S. C., Secs. 2553 and 2557)

The Grand Jury further charges: That Frank Flier, on or about the 2nd day of February, 1946, in the City and County of San Francisco, State of California, unlawfully did sell, dispense and distribute, not in or from the original stamped package, a certain quantity of a derivative and preparation of morphine, to wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin.

Fifty-second Count

(Jones-Miller Act, 21 U. S. C., Section 174)

The Grand Jury further charges: That Millard Davis, on or about the 2nd day of February, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

Fifty-third Count

Harrison Narcotic Act, 26 U. S. C., Secs. 2553
and 2557)

The Grand Jury further charges: That Frank Flier, on or about the 3rd day of February, 1946, in the City and County of San Francisco, State of California, unlawfully did sell, dispense and distribute, not in or from the original stamped package, a certain quantity of a derivative and preparation of morphine, to wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin.

Fifty-fourth Count

(Jones-Miller Act, 21 U.S.C. Section 174)

The Grand Jury further charges: That Stanley Paliwoda, on or about the 3rd day of February, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

Fifty-Fifth Count

(Jones-Miller Act, 21 U.S.C. Section 174)

The Grand Jury further charges: That Vincent Bruno, Frank Flier, Salvatore Billeci, Renaldo

Ferrari and Samuel Louis Cohen, on or about the 21st day of February, 1946, in the City and County of San Francisco, State of California, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one bindle containing approximately one dram of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Fifty-sixth Count

(Conspiracy, 18 U.S.C. Section 88)

The Grand Jury further charges: That Vincent Bruno, Frank Flier, Salvatore Billeci, Renaldo Ferrari, Richard Benson, Mike J. Billeci, John Christopher, John Orman Knight, Joseph Pitta, Samuel Louis Cohen, Stanley Paliwoda, Henry Gourdin, Millard Davis, Paul Crivello, John Ternullo, Harry Fisher, and Frank Arriola at a time and place to the said Grand Jury unknown, did feloniously conspire together and with other persons whose names are to said Grand Jury unknown, to receive, conceal, buy, sell and facilitate the transportation and concealment of a derivative and preparation of morphine, to-wit, heroin, which had been imported into the United States of America contrary to law, as said defendants then and there knew, in violation of Section 174, Title 21, United States Code; that thereafter and during the exist-

ence of said conspiracy, one or more of said defendants hereinafter mentioned by name, in the City and County of San Francisco, State of California, within said Division and District, and at other places as hereinafter alleged, did the following acts in furtherance of and to effect the object of the conspiracy aforesaid:

1. On January 5, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Vincent Bruno removed a bindle of heroin from underneath a beer case. At that time and place he held a conversation with the defendant Salvatore Billeci.

2. On February 6, 1946, the defendants Vincent Bruno and Salvatore Billeci left the United States of America and entered the United States of Mexico at Calexico, California.

3. On January 12, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Frank Flier held a conversation with the defendant Millard Davis.

4. On January 6, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Frank Flier received an unknown amount of currency from the defendant Millard Davis.

5. On January 6, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of [22] San Francisco, State of California, the defendant Salvatore Billeci poured the contents of eight or nine bindles of heroin into another package.

6. On February 2, 1946, the defendants Salvatore Billeci and Vincent Bruno entered the United States of America from the United States of Mexico at Calexico, California.

7. On March 1, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Renaldo Ferrari held a conversation with the defendants Vincent Bruno and Frank Flier, and at that time the defendant Renaldo Ferrari received an unknown amount of currency from the defendant Frank Flier.

8. On January 8, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Richard Benson removed a bindle of heroin from the shelf of the storeroom.

9. On January 10, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Mike J. Billeci had a conversation with the defendants Frank Flier and Vincent Bruno.

10. On January 17, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant John Christopher held a conversation with the defendant Frank Flier.

11. On January 14, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant John Orman Knight held a conversation with the defendant Frank Flier.

12. On January 15, 1946, at the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant John Orman Knight [23] removed a bindle of heroin from a fuse box in the hallway and put the bindle in his pocket.

13. On January 11, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Joseph Pitta held a conversation with the defendants Vincent Bruno and Frank Flier.

14. On January 31, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Samuel Louis Cohen received a bindle of heroin from the defendant Frank Flier.

15. On February 1, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Stanley Paliwoda had a conversation with the defendant Frank Flier.

16. On February 13, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Stanley Paliwoda had a conversation with the defendant Vincent Bruno.

17. On February 11, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Henry Gourdin had a conversation with the defendants Frank Flier, John Orman Knight and Vincent Bruno.

18. On January 12, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Millard Davis held a conversation with the defendant Frank Flier.

19. On February 2, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Millard Davis [24] received a bundle of heroin from the defendant Frank Flier and concealed it on his person.

20. On January 11, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Paul Crivello received an unknown amount of currency from the defendant Frank Flier.

21. On February 11, 1946, at the premises known as the Star Dust Bar, at 1098 Sutter Street, in said

City and County of San Francisco, State of California, the defendant John Ternullo had a conversation with the defendants Vincent Bruno, Renaldo Ferrari and Frank Arriola. Thereafter, on the same day, he drove in his automobile to the vicinity of Geary and Divisadero Streets, in the City and County of San Francisco, State of California.

22. On February 26, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant John Ternullo had a conversation with the defendant Frank Flier.

23. On January 15, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Harry Fisher received a bindle of heroin from the defendant Frank Flier.

24. On February 11, 1946, in the premises known as the Star Dust Bar, at 1098 Sutter Street, in said City and County of San Francisco, State of California, the defendant Frank Arriola had a conversation with the defendants Vincent Bruno, Renaldo Ferrari and John Ternullo.

A True Bill.

ARTHUR J. KAHN,
Foreman.

/s/ FRANK J. HENNESSY,
United States Attorney.

(Approved as to form: R. B. McM.)

[Endorsed]: Filed Sept. 18, 1946. [25]

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Thursday, the 10th day of October, in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Louis E. Goodman,
District Judge.

[Title of Cause.]

ARRAIGNMENT OF DEFENDANT

This case came on regularly this day for entry of plea. The defendants were present in proper person and with their respective counsel: Roger Brame, Esq., for defendant Joseph Pitta; and Sol A. Abrams, Esq., and William Sullivan, Esq., appearing for James MacInnis, Esq., attorney for defendant Renaldo Ferrari. Reynold H. Colvin, Esq., Assistant United States Attorney, was present on behalf of the United States.

On motion of Mr. Colvin, the defendants were called for arraignment. The defendants were informed of the return of the Indictment by the United States Grand Jurors, and asked if they were the persons, among others, named therein and upon their answer that they were and that their true names were as charged, thereupon counsel for

defendants waived the reading of the Indictment. Copy of Indictment was handed to each defendant who stated that he understood the charge against him.

After hearing the attorneys, it is ordered that this case be continued to November 25, 1946, for submission of motions for separate trial and to plead.

Further ordered that the defendants be released on their own [26] recognizance in this case, the attorneys herein having been heard in this regard.

[Title of District Court and Cause.]

MOTION FOR BILL OF PARTICULARS

Comes Now Renaldo Ferrari, one of the defendants in the above entitled matter, and moves this court for its order, compelling plaintiff herein to furnish him with a bill of particulars setting forth dates, times, places, occurrences, means, and any and all other reasonable descriptions in connection with the accusations made against him herein.

This motion is based upon all the files and documents bearing the above title and number, and is addressed to the sound discretion of this court, upon the ground that the accusations now lodged against this defendant are too vague, uncertain, general and indefinite to enable him to prepare a defense thereto or indeed, to enter a plea herein; and further, that said accusations as couched in said indictment, are too vague, indefinite, general and uncertain to

enable defendant to plead an acquittal in said cause in response to any subsequent prosecution which might be brought against him.

Dated, November 27, 1946.

VINCENT W. HALLINAN,
JAMES MARTIN MacINNIS,
Attorneys for Defendant
Renaldo Ferrari.

[Endorsed]: Filed Dec. 2, 1946. [28]

[Title of District Court and Cause.]

MOTION TO DISMISS INDICTMENT

(Rules of Criminal Procedure, Rule 12,
Subd. B, Paragraph 2)

Comes Now Renaldo Ferrari, one of the above defendants herein, and moves this court to dismiss said indictment upon the following grounds:

1. Said indictment fails to show jurisdiction in the court;
2. Said indictment fails to charge an offense;
3. Said indictment is so vague, indefinite and uncertain with respect to times, places and persons, and as to the means by which any of the acts alleged to have been participated in by this defendant, that he is not informed of the nature and cause of such accusations, and is unable to prepare his defense thereto, or to plead an acquittal or conviction thereof as a bar to a subsequent prosecution.

4. The prosecution of this defendant under said indictment would violate the rights secured him by the Sixth Amendment to the Constitution of the United States.

5. The prosecution of this defendant under said indictment would violate the rights secured him by the Fifth Amendment to the Constitution of the United States.

Dated, November 27, 1946.

VINCENT W. HALLINAN,
JAMES MARTIN MacINNIS,
Attorneys for Defendant
Renaldo Ferrari.

(Points and authorities in support of foregoing motion.)

[Endorsed]: Filed Dec. 2, 1946. [29]

[Title of District Court and Cause.]

MOTION OF DEFENDANT FOR ORDER
GRANTING SEVERANCE OF JURY TRIAL

Comes Now the Defendant Renaldo Ferrari, and moves this Court for its order, granting him a severance of his trial by jury herein, to the end that he will not be compelled to stand trial in one cause with all of the defendants mentioned in the indictment herein.

This motion will be based upon all the files and documents bearing the above entitled number and title, will be addressed to the sound discretion of

the court pursuant to the new Rules of Criminal Procedure, and will be based upon the further ground that the indictment herein contains fifty-six (56) counts, and that the fifty-sixth count of said indictment contains twenty-six (26) sub-counts making a total of eighty (80) separate allegations of fact; against said eighty (80) allegations of fact, all of which will be put in issue herein at the time of the entering of pleas to said indictment, this moving defendant, Renaldo Ferrari, is accused in only seven (7) allegations thereof.

Dated, November 27, 1946.

VINCENT W. HALLINAN,
JAMES MARTIN MacINNIS,
Attorneys for Defendant
Renaldo Ferrari.

[Endorsed]: Filed Dec. 2, 1946. [30]

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 2nd day of December, in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Louis E. Goodman,
District Judge.

[Title of Cause.]

HEARING ON MOTION FOR SEPARATE
TRIALS, PLEA OF "NOT GUILTY," MO-
TIONS TO DISMISS AND FOR BILL OF
PARTICULARS AS TO CERTAIN DE-
FENDANTS DENIED

This cause came on regularly this day for hearing on motion for separate trials, also for entry of plea of defendants Vincent Bruno, et al. Daniel C. Deasy, Esq., Assistant United States Attorney, was present on behalf of the United States. The defendants herein and their attorneys were present as heretofore. Defendants Vincent Bruno, Frank Flier, Salvatore Billeci, Richard Benson, Mike J. Billeci, John Christopher, Samuel Louis Cohen, Stanley Paliwoda, Henry Gourdin, Millard Davis, Paul Crivello, John Ternullo, Harry Fishman, Frank Arriola, Renaldo Ferrari, and Joseph Pitta each entered a plea of "Not Guilty" as to the Indictment filed herein, which said pleas were ordered entered.

Ordered that this case be continued to December 16, 1946, at 2 p.m. to be set for trial and for hearing of motions. [31]

Further ordered that the motions to dismiss and for bill of particulars as to certain defendants be and the same are hereby denied. [32]

[Title of District Court and Cause.]

WAIVER OF JURY TRIAL

In conformity with Rule 23 of the Rules of Criminal Procedure for the District Courts of the United States, effective March 21, 1946, we, the undersigned, do hereby waive trial by jury and request that the above entitled cause be tried before the Court sitting without a jury.

Dated, San Francisco, California, April 22, 1947.

RENALDO FERRARI,

Defendant,

JAMES MARTIN MacINNIS,

Attorney for Defendant

Renaldo Ferrari.

Approved:

LOUIS E. GOODMAN,

Judge, United States District

Court, Northern District of

California.

[Endorsed]: Filed April 22, 1947. [33]

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 22nd day of April, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Louis E. Goodman,
District Judge.

[Title of Cause.]

ORDER GRANTING MOTIONS FOR
SEVERANCE OF TRIAL

The defendants and their attorneys being present, the cases of these defendants came on regularly this day for trial. After hearing the attorneys herein, the Court advising the parties hereto that the motions for severance of trial had been granted, and James T. Davis, Esq., Assistant United States Attorney, advising the Court that it was the intention of the United States Attorney to proceed with substantive offenses contained in the Indictment and not the conspiracy charge * * *. [34]

District Court of the United States Northern
District of California, Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Wednesday, the 23rd day of April, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Louis E. Goodman,
District Judge.

[Title of Cause.]

ORDER DENYING MOTION TO DISMISS
COUNTS NOS. 1, 39 AND 40 OF INDICT-
MENT

The case of United States of America vs. Renaldo Ferrari came on regularly this day for trial before the Court sitting without a jury, the parties hereto having heretofore waived trial by jury in writing. The defendant, Renaldo Ferrari, was present in Court with his attorney, James MacInnis, Esq. James T. Davis, Esq., Assistant United States Attorney, was present on behalf of the United States. G. E. Mallory, Thomas E. McGuire, William H. Grady, Henry B. Hays and Elmer A. Briscoe were sworn and testified on behalf of the United States. Mr. Davis introduced in evidence and filed U. S. Exhibits Nos. 1 to 7 inclusive. The United States then rested. [35] On motion of Mr. Davis, it is Ordered that all Counts of the Indictment other than Counts One, Thirty-nine and Forty be and the same are hereby dismissed as to defendant Renaldo Ferrari.

Mr. MacInnis made a motion to dismiss Counts One, Thirty-nine and Forty of the Indictment, which motion was ordered denied.

Henry J. Gourdin and Vincent Bruno were sworn and testified on behalf of defendant. Mr. MacInnis introduced in evidence and filed Defendant's Exhibits A-1, A-2, A-3, A-4, A-5, A-6, A-7 and A-8.

The hour of adjournment having arrived, it is ordered that the further trial of this case be continued to April 24, 1947, at 10 o'clock a.m. [36]

District Court of the United States,
Northern District of California,
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Thursday, the 24th day of April, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Louis E. Goodman,
District Judge.

[Title of Cause.]

MOTIONS IN ARREST OF JUDGMENT AND
FOR NEW TRIAL DENIED; JUDGMENT
OF GUILTY; SENTENCE

The parties hereto being present as heretofore, the further trial of the defendant Renaldo Ferrari as to Counts Nos. One, Thirty-nine and Forty of Indictment was this day resumed. Frank Flier and Renaldo Ferrari were sworn and testified on behalf of the defendant. Mr. MacInnis introduced in evidence and filed Defendant's Exhibits A-9, A-10, A-11, A-12 and B. The defendant thereupon rested. William H. Grady, Henry B. Hays and Thomas E. McGuire were recalled and further testified on behalf of the United States, in [37] rebuttal, and the United States rested. After hearing the attorneys herein, the case was submitted to the Court, and

due consideration having been thereon had, It Is Ordered that the defendant Renaldo Ferrari be, and he is hereby, adjudged Guilty on Counts One, Thirty-Nine and Forty as charged in the Indictment.

Mr. MacInnis made a motion in arrest of judgment and motion for new trial, which motions were ordered denied.

The defendant was then called for judgment. After hearing the defendant and the attorneys, and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant Renaldo Ferrari, having been convicted upon his plea of "Not Guilty" and a finding by the Court of Guilty of the offense as charged in Counts One, Thirty-nine and Forty of the Indictment, be and he is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of One (1) Day and pay a fine to the United States of America in the sum of One (\$1.00) Dollar on Count One of the Indictment; and Three (3) Years and pay a fine in sum of One Hundred (\$100.00) Dollars on each of Counts Thirty-Nine and Forty of the Indictment, making a total fine of Two Hundred and One (\$201.00) Dollars.

It Is Further Ordered that the terms of imprisonment [38] imposed on said defendant in Counts One, Thirty-nine, and Forty commence and run concurrently.

It Is Further Ordered that all remaining Counts contained in the Indictment be, and the same are hereby, dismissed as to defendant Renaldo Ferrari.

Ordered that judgment be entered herein accordingly.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of the judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

The Court recommends commitment to a Federal Penitentiary. [39]

District Court of the United States for the
Northern District of California, Southern
Division

No. 30449-G

UNITED STATES OF AMERICA,

vs.

RENALDO FERRARI.

JUDGMENT AND COMMITMENT

On this 24th day of April, 1947, came the attorney for the government and the defendant appeared in person with counsel.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a finding of guilty of the offense of violation of the Jones-Miller Act, 21 U.S.C. Section 174, in that the defendant on or about the 5th, 17th and 28th days of January, 1946, in the City and County of San Francisco, State of California, did fraudulently and knowingly conceal and facilitate the concealment of certain lots of heroin as charged in Cts. 1, 39, and 40 of the Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of One (1) Day and pay a fine to the United States of America in the sum of One Dollar (\$1.00) on Count One of the Indictment, and Three (3) Years and pay a fine in the sum of One Hundred Dollars (\$100.00) on each of Counts Thirty-Nine and Forty of the Indictment, making a total fine of Two Hundred and One Dollars (\$201.00).

It Is Further Ordered that the terms of imprisonment imposed on said defendant in Counts One, Thirty-Nine, and Forty, commence and run Concurrently.

It Is Further Ordered that all remaining counts contained in the Indictment be and they are dismissed as to the defendant Renaldo Ferrari.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

LOUIS E. GOODMAN,
United States District Judge.

Examined by:

JAMES T. DAVIS,
Asst. U. S. Attorney.

The Court recommends commitment to: Federal Penitentiary.

Entered in Vol. 38 Judg. and Decrees at Page 96.

Filed and entered this 24th day of April, 1947.
C. W. Calbreath, Clerk; L. R. Elkington, Deputy Clerk. [40]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Renaldo Ferrari, defendant herein, hereby appeals to the Circuit Court of Appeals of the United States of America in and for the Ninth Circuit from that certain judgment of conviction made and entered against him upon this day, April 24, 1947, by the above entitled court, Honorable Louis E. Goodman, presiding, the same being judgment en-

tered upon respective findings of guilt returned by said court against said defendant upon counts one, thirty-nine and forty of the indictment bearing the above number and upon which said defendant received, upon the respective counts designated above, the following respective sentences:

Upon said count one—one day's imprisonment and a fine of \$1.00

Upon said count thirty-nine—three years' imprisonment and a \$100.00 fine

Upon said count forty—three years' imprisonment and \$100.00 fine

(All of said sentences and/or impositions to run concurrently)

Said defendant also appeals from all orders and/or judgment of an interim character, or otherwise, heretofore made by the above entitled court in the above entitled cause upon all ruling of said court, upon demurrers heretofore submitted and/or motions to dismiss heretofore made and from all rulings of the above entitled court made during the course of the trial of said defendant.

RENALDO FERRARI,
Defendant.

VINCENT W. HALLINAN,
JAMES MARTIN MacINNIS,
Attorneys for Defendant.

[Endorsed]: Filed April 29, 1947. [41]

At a Stated Term, to-wit, the October Term 1946, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Friday, the first day of August, in the year of our Lord one thousand nine hundred and forty-seven.

Present: Honorable Francis A Garrecht,
Senior Judge, Presiding,
Honorable William Healy,
Circuit Judge,
Honorable William E. Orr,
Circuit Judge.

No. 11656

RENALD FERRARI,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORDER SETTING ASIDE DEFAULT OF APPELLANT, AND EXTENDING TIME TO FILE TRANSCRIPT OF RECORD

Upon consideration of the motion of appellant, and stipulation of Mr. Frank J. Hennessy, United States Attorney, counsel for appellee, and good cause therefor appearing,

It Is Ordered that the default of the appellant in failing to file his record on appeal within the forty days from filing the notice of appeal be, and

the same is hereby set aside and the appellant may have to and including August 18, 1947, within which to file the certified transcript of record on appeal herein. [42]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK
TO TRANSCRIPT OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 42 pages, numbered from 1 to 42, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of United States of America, Plaintiff, vs. Renaldo Ferrari, Defendant, No. 30449-G, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$15.20 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 13th day of August, A. D. 1947.

[Seal]

C. W. CALBREATH,
/s/ M. E. VAN BUREN,
Deputy Clerk.

In the Southern Division of the United States
District Court in and for the Northern District
of California

Before: Hon. Louis E. Goodman,
Judge.

No. 30,449-G

UNITED STATES OF AMERICA,

vs.

RENALDO FERRARI,

Defendant.

Reporter's Transcript

April 23 and 24, 1947

Appearances:

For the Government: James T. Davis, Esq., As-
sistant United States Attorney.

For the Defendant: James M. MacInnis,
Esq. [1*]

Wednesday, April 23, 1947, 10:00 o'Clock A.M.

The Clerk: United States vs. Ferrari, for trial.

Mr. Davis: Ready.

Mr. MacInnis: Ready.

Mr. Davis: If the Court please, in the case of
United States vs. Ferrari, the Government is pro-
ceeding on Count 1, Count 39 and Count 40. Any
other counts in which the defendant Renaldo Fer-
rari may be mentioned are dismissed.

The Court: Very well.

* Page numbering appearing at top of page of Reporter's certified
Transcript of Record.

Mr. Davis: We are proceeding to trial on Counts 1, 39 and 40. If there are any codefendants listed in those, as to the codefendants, the counts are dismissed.

The Court: Very well.

Mr. MacInnis: I would like to take the liberty of making an opening statement, your Honor, so that the Court may be advised as to the facts which we expect to be developed by the Government's evidence.

In this case we have been constrained to waive a trial by jury with full cognizance of your Honor's attitude in this type of offense. I think that, as your Honor has remarked in various of these cases, it is important that society be protected from persons who enhance their own profit by the narcotic traffic. But it is just as important that an innocent defendant be not enmeshed in the maelstrom [2] of trouble concocted by persons other than himself. We expect to show the Court that the defendant Ferrari has been brought to trial here upon the maxim that a man is known by the company he keeps and not upon any other serious intendment. I think it has been established already by the cases which your Honor has heard, by the various pleas of guilty which have been entered by other persons, that there was something going on in relation to the narcotic traffic at the tavern here in San Francisco known as the Star Dust Bar. I think it is obvious that some persons were selling heroin. I think it is obvious that heroin was concealed in a certain room. And I think it is accepted that there

was an investigation going on, and that various of the agents for the Government had access through a certain peep hole to a certain amount of activities which may have gone on in that room. I will not reiterate what may have been said already concerning the difficulties of observation through that peephole because perhaps it will be developed from another perspective through the evidence in this case. I think the best proof I can offer the Court with respect to the defendant Ferrari, with respect to his innocence in this case, will be the testimony of persons who were actually guilty of the offense with which he stands charged. We anticipate calling as witnesses for the defendant Mr. Vincent Bruno, Mr. Frank Flier and Mr. Salvatore Billeci. Those men have [3] pleaded guilty to either the identical offense or to similar offenses growing out of the same transactions. We cannot apologize for their stature before the Court. We cannot enhance their credibility by any words, but we will offer their testimony to the Court to this end: that Ferrari knew all of these defendants. Ferrari is no angel, your Honor. The evidence will not reveal him as an angel. The evidence from my point of view will reveal him as a man who mingled with these people but who, whether from his experiences in his past life or for some other reason, had nothing to, financially or otherwise, with the transactions which have been narrated in these various cases to the Court. He is not a user of narcotics. He has not made a cent out of these transactions. He was in and out of the Star Dust Bar upon many

occasions, and we will invite the Court to scrutinize carefully the oral admissions which will be offered in evidence as corroborating proof attached to the presence of this man in the back room of the Star Dust Bar. We will offer, your Honor, the suggestion that words and conversations may be equivocal in meaning. We will ask your Honor to give full intent to the section of the Code which says that the oral admissions of a defendant must be viewed with caution. We will ask your Honor to scrutinize carefully whether or not under the decisions the acts which will be attributed to Ferrari constitute in the [4] language of this indictment either concealment or facilitating the concealment of heroin or of any other narcotic, and upon those premises we will be very glad to submit the case to your Honor's consideration.

Mr. Davis: You have no objection, Mr. MacInnis, I presume, to my calling the Government chemist out of order?

Mr. MacInnis: No objection.

G. E. MALLORY

called as a witness on behalf of the Government; and being first duly sworn, testified as follows:

Q. (By the Clerk): Will you state your name to the Court? A. G. E. Mallory.

Direct Examination

By Mr. Davis:

Q. Mr. Mallory, what is your occupation?

A. Chemist, employed by the U. S. Treasury Department, Bureau of Internal Revenue.

(Testimony of G. E. Mallory.)

Q. How long have you been engaged in that occupation? A. 26 years.

Q. In the course of your duties in that position, did you have occasion to perform certain tests upon substances submitted to you by the Bureau of Narcotics to determine the nature of their contents?

A. Yes, sir.

Q. Have you brought with you today certain exhibits which you [5] have examined at the request of the Narcotic Division? A. Yes, sir.

Q. I will show you, Mr. Mallory, a white paper package contained in this brown envelope marked "Laboratory 152304," and ask you if you have ever seen that before? A. Yes, sir.

Q. From whom did you receive that?

A. Narcotic Agent Briscoe.

Q. When did you receive it?

A. On January 8, 1946.

Q. Did you perform the tests which you have described on the contents of that package?

A. Yes, sir.

Q. What did you find that package to contain?

A. It contained heroin hydrochloride.

Q. I will show you this brown envelope marked "Laboratory 152304," and ask you if that is the envelope in which a white paper package was contained when you received it? A. Yes, sir.

Q. Have you retained both of those in your possession until brought here to court today?

A. Yes, sir.

(Testimony of G. E. Mallory.)

Mr. Davis: If the Court please, I will ask that this white paper package identified by the witness be marked as Government's Exhibit first in order for purposes of [6] identification; the brown paper envelope marked "Laboratory No. 152304," I ask to be marked as Government's Exhibit No. 2 for purposes of identification.

The Court: Very well.

(The package and envelope referred to were thereupon marked, respectively, U. S. Exhibits 1 and 2 for Identification.)

Q. (By Mr. Davis): I will show you, Mr. Mallory, a white paper package and ask you if you have ever seen that before? A. Yes, sir.

Q. When did you first see that?

A. January 21, 1946.

Q. And from whom did you receive that?

A. Narcotic Agent Briscoe.

Q. Did you perform the tests which you have described upon the contents of that package?

A. Yes, sir.

Q. And what did you find it to contain?

A. Heroin hydrachloride.

(At this point in the testimony the Jury in the case of U. S. vs. Pitta returned its verdict and the defendant in that case was sentenced.)

Q. (By Mr. Davis): I will show you this envelope marked "Laboratory 152574," and ask you if that is the envelope which contained this package, this white package which is [7] dated January 17, 1946? A. Yes, sir.

(Testimony of G. E. Mallory.)

Q. Have both of these been in your possession since they were delivered to you until they were produced in court today? A. Yes, sir.

Mr. Davis: At this time, if the Court please, I offer in evidence as Government's Exhibit first in order the white paper package identified by the witness and the brown envelope numbered 152574.

The Court: Did the witness state from whom he received those?

Mr. Davis: Yes, I believe so.

The Witness: Narcotic Agent Briscoe.

(The envelopé and package in question were thereupon marked, respectively, U. S. Exhibits 3 and 4, for Identification.)

Q. (By Mr. Davis): I will show you this white paper package and ask you if you have seen that before? A. Yes, sir.

Q. From whom did you receive that?

A. I received this from two narcotics agents, Narcotics Agent Hayes and Narcotics Agent Briscoe on the 29th of January, 1946.

Q. Did you perform the tests which you have described upon [8] the contents of that package?

A. Yes, sir.

Q. What did you find it to contain?

A. Heroin hydrochloride.

Q. I will show you this envelope marked "Laboratory 157378," and ask you if that is the envelope in which this white package which you have described was contained? A. It is, yes, sir.

(Testimony of G. E. Mallory.)

Q. Have both of these been in your possession until they were produced in court today?

A. Yes, sir.

Mr. Davis: If the Court please, at this time I will introduce as Government's Exhibit next in order for purposes of identification this white paper package identified by the witness, and as Government's Exhibit next in order this envelope marked "Laboratory 152378."

(The envelope and package referred to were thereupon marked respectively U. S. Exhibits 5 and 6 for Identification.)

Mr. Davis: That is all.

Mr. MacInnis: No questions.

The Court: Do you wish Mr. Mallory any further?

Mr. MacInnis: I do not. [9]

THOMAS E. McGUIRE

called as a witness on behalf of the Government; and being first duly sworn, testified as follows:

The Clerk: State your name to the Court.

A. Thomas E. McGuire.

Direct Examination

By Mr. Davis:

Q. Mr. McGuire, what is your occupation, please? A. Federal Narcotics Agent.

Q. How long have you been engaged in that occupation? A. Approximately twenty years.

(Testimony of Thomas E. McGuire.)

Q. Directing your particular attention to the months of January and February, 1946, were you among other agents conducting an investigation of the premises known as the Star Dust Bar on Sutter Street?

A. Yes, sir, I was.

Q. During that time did you have a room which was adjacent to the liquor store room of the Star Dust Bar from which you could see into the premises of the Star Dust Bar?

A. Yes, sir, I did.

Mr. Davis: May I withdraw the exhibit introduced in the previous case, your Honor, for purposes of this case?

The Court: Very well.

Q. (By Mr. Davis): I will ask you to examine this diagram, Mr. McGuire, which purports to be a diagram of the basement [10] of the premises of the Star Dust Bar, and ask you if after your examination that, to the best of your recollection at this time is a true and accurate portrayal of the physical characteristics of the rooms at that time?

A. Yes, sir, it is.

Mr. Davis: If the Court please, I will offer this as Government's Exhibit next in order for purposes of identification.

(The diagram in question was thereupon marked U. S. Exhibit No. 7 for Identification.)

Q. (By Mr. Davis): Mr. McGuire, in the interest of saving time will you briefly and to the best of your ability describe the situation as to these rooms?

(Testimony of Thomas E. McGuire.)

A. In the rear of the Star Dust Bar in this basement; that is the basement of the apartment house that is located on Larkin Street, the northeast corner of Larkin and Sutter Streets. The basement consists of a large baggage room that is used for the storage of baggage and the household furnishings of the apartment house. That had a heavy door on it and locked from the outside. It had four windows within that facing the alley way in the rear of the building with an exit on Larkin Street. In the basement with this baggage room was the liquor store room or a smaller room that was occupied and used as a liquor store room that belonged to the Star Dust Bar. There was a large hall way [11] and there was a men's toilet and an elevator shaft and an exit leading out into a light well, and then the entrance leading into the rear of the Star Dust Bar.

Q. Were there, or were there not certain holes in the wall separating the baggage room and the hall way and the liquor room?

A. Yes, sir, there was.

Q. Will you describe them for us?

A. At the door of the baggage room we had two holes placed therein into the wall beside the door. Those two holes gave an observation of the public hall, the entrance to the bar, and through those two holes you were able to see the people coming from the bar and going into the liquor room. Those two were in heavy brick wall, and we had those holes placed. One was three feet from the ground or thereabouts, and the other was higher, about five

(Testimony of Thomas E. McGuire.)

feet from the ground. They looked out from the baggage room to the hallways leading into the liquor room and the bar of the Star Dust. There were four other holes that were in the partition between the baggage room and the liquor room. You could not see the public hall from those four holes. You could only see the inside of the liquor supply room, and that could be seen from the baggage room.

Q. Approximately how large were those holes?

A. I would judge they ran from three-and-a-half to four [12] inches to about eight inches. They were irregular and they were cut out previously by some other people other than ourselves.

Q. About how high were they from the floor?

A. I would judge they were three-and-a-half or four feet from the floor. That was the holes that led between the baggage room and the liquor room.

Q. In the wall of the liquor room right opposite these holes was there anything on that wall?

A. We could see numerous bottles of assorted whiskeys, wines and cordials that were on shelves.

Q. You say there were shelves on that wall?

A. Yes, sir.

Q. What was the position of any of the shelves to the particular holes, if you can describe that?

A. You could see the tops of the liquor bottles, but it did not obscure the entire view from the inside of the liquor room.

Q. Can you, from your recollection, describe more accurately the position of these four holes in relation to any particular shelf that was in there?

(Testimony of Thomas E. McGuire.)

A. Well, if I am judging—looking at it from the baggage room into the liquor room you could see that there was a shelf below the hole, and you could not see, of course, even in this wall, on this side, the same side as the holes [13] were in, but on the opposite side you could see that there were different shelves on the opposite side of the wall.

Q. In relation to the hole as you looked through it, could you see a shelf on your side of the wall, that is, the side of the wall nearest to the hole?

A. Yes, sir, I would say that you could possibly see the edge of the shelf sticking out from the wall, but not enough—and you could see bottles on it.

Q. Was the shelf above or below the hole, or in the middle of it?

A. I believe it was below it.

Q. The shelf was below the hole?

A. Below it, because I could see the tops of whiskey bottles.

Q. Directing your attention to the fifth day of January, 1946, did you have occasion to see the defendant, Mr. Ferrari, on that day? A. I did.

Q. When did you first see him, and where?

A. On January 5 about eight-thirty in the evening—1946, this is—I seen the defendant Ferrari under this liquor store room where Yorkie Flier had previously entered. In other words, Yorkie Flier had entered the liquor room for about two or three moments, or a minute or two, before the defendant, and I saw the defendant enter into the liquor room. [14]

(Testimony of Thomas E. McGuire.)

Q. Where were you at the time you saw the defendant and Flier enter in relation to the particular holes?

A. I was at one of the holes observing Flier as the defendant Ferrari entered.

Q. I mean, which holes? The holes that looked into the hallway or the holes which looked into the liquor room?

A. No, sir, at the time the Defendant Ferrari entered the liquor room I was observing the holes entering into the liquor room.

Q. So that you did not see him coming down the hall? A. No, sir, I did not.

Q. What, if anything, did you observe after the defendant Ferrari entered the liquor room?

A. The defendant Ferrari came into the liquor room, and the man known to me as Flier handed to the defendant Ferrari a bindle, a small piece of paper. The defendant took a penknife and extracted some of the white substance from this bindle, placed it to his nostrils, and with deep inhalations withdrew the white substance into his nostrils, both nostrils on two occasions, first in one and then the other. After doing so—at first, I had observed the defendant Flier do the same thing prior to giving it to Ferrari. Ferrari did as Flier had done, took those deep inhalations of the white substance, and then handed back the paper to Flier and the knife, and Flier then got ready to leave the premises [15] after refolding the paper. Shall I continue?

Q. Before you go on any further as to Flier, this

(Testimony of Thomas E. McGuire.)

bindle you say you saw Flier give to the defendant, had you ever seen that bindle before?

A. Well, not until I seen it in Flier's hands, no, sir, that was the first evening that we were in there.

Q. What happened after that transaction? Did they leave?

A. They opened the liquor storeroom, and as they did so I noticed the defendant Flier hide the bindle in which I had seen the white substance extracted in between three or four beer cases. That was the first time I had seen that place of concealment, on January 5, and I observed the place of concealment from the vantage point of the baggage room in looking through the openings into the liquor room to the door as they were leaving. I was observing what had happened to the bindle. I saw the defendant Flier place the bindle in the place of concealment on this particular occasion from the inside of the liquor room, through the liquor room, if I make myself clear. The door was partly open as he was placing it there.

Q. Did you see that bindle again on that evening?

A. Yes, sir, about ten o'clock at night at a favorable opportunity to myself and Agent Grady, I left the place of concealment, went to the place of concealment where the narcotic was hidden, or at least the bindle was hidden at that time, [16] took it into the baggage room. I withdrew some of the white substance and refolded the paper and placed it back in the place of concealment again, and I retained

(Testimony of Thomas E. McGuire.)

the white substance in my possession until such time as I turned it over the Agent Briscoe, who forwarded it to the chemist.

Q. That was about ten o'clock?

A. I extracted the sample of evidence from the envelope about ten o'clock, 10:10.

Q. About what time was it that Ferrari and Flier used it?

A. I would judge it was about eight-thirty.

Q. Did you have the hiding place of that bundle under your observation in the interim?

A. Yes, sir, I did. I had remained there and watched it.

Q. Did you see anyone else approach and touch that bundle in any way?

A. I do not recall that they did at that time. They did later.

Q. Between the time that you saw the defendant and Flier use it and the time that you took the sample, do you know whether anyone else disturbed the bundle?

A. No, sir, to the best of my knowledge and recollection I can't recall that it had been disturbed at that particular instant that night, but later, after I had extracted it, it had been disturbed.

Q. I will show you Government's Exhibit No. 1 and ask you if this is the bundle in which you placed the contents, the [17] sample which you removed from the bundle which you described?

A. Yes, sir, it is.

(Testimony of Thomas E. McGuire.)

Q. Did you place your initials on it at this time?

A. My initials are on that package.

Q. And you recognize them there now?

A. Yes, sir.

Q. Did the defendant and Flier have any conversation while they were in the room?

A. There was very little conversation at that time. They just came in and remained there a very short while and then left.

Q. Directing your attention, Mr. McGuire, to the 17th day of January, 1946, were you in this room in the Star Dust Bar again?

A. Yes, sir, I was.

Q. What time did you first arrive there?

A. I had been there in the afternoon, earlier in the afternoon and in the evening. I had been there other than the time I took to have my dinner at six or seven o'clock, depending on which of the other agents had relieved me.

Q. Did you see the defendant Ferrari on that occasion? A. Yes, sir, I did.

Q. At what time was that?

A. That was about eleven-thirty at night I seen the defendant enter that same liquor store from the place of concealment [18] which I had in the baggage room.

Q. Who, if anyone else, was with him?

A. He was with Flier again.

Q. What did you observe on that occasion?

A. I observed the defendant on that occasion take a bindle of heroin from the place of conceal-

(Testimony of Thomas E. McGuire.)

ment. The defendant Ferrari used it in the same manner in which he had on the first occasion, by taking deep inhalations of the white substance from a knife blade, after which the paper—the white substance was enclosed back into the paper in the original form, handed to Flier, and Flier again concealed it in the same place of concealment between the whiskey bottles.

Q. You say you were in the baggage room looking out and you saw Flier remove the bindle in the second instance as in the first, is that correct?

A. Well, I did not see him remove it in the first instance, because it was the first occasion we had been there and I had no knowledge of the place of concealment of the narcotic. But that was the first indication that I had that they were concealing these narcotics under the beer cases, and I did not see them until after they were leaving the liquor store. That was on the first occasion. But on the second occasion I was able, knowing that the narcotics were concealed between these beer bottle boxes, I had that under observation at the time Flier and Ferrari came to the liquor store and prior to [19] their entering into the liquor room Flier withdrew the narcotic from the place of concealment upon entering the liquor room.

Q. Had you ever seen that bindle which was withdrawn before? A. Yes, sir, I had.

Q. When had you seen that?

A. At ten o'clock that evening, having had the bindle under observation on previous occasions when

(Testimony of Thomas E. McGuire.)

other men were in the liquor store, and at a favorable time to myself and the other agents I again stepped out of the place of concealment, and it was, I should judge, eleven o'clock that I did that; I took the substance—I took the package back into the baggage room, removed some of the contents, and replaced the bundle back in the place of concealment.

Q. I will show you Government's Exhibit No. 3 and ask you if this is the package in which you placed the sample which you took on the second occasion from the bundle which was concealed between the beer cases?

A. Yes, sir, it is. My initials are now on this package which I placed at that time.

Q. At what time, approximately, did you take the sample?

A. I would say it was approximately eleven o'clock.

Q. At what time did the defendant Ferrari and Flier use it?

A. I would say it was eleven-thirty.

Q. Between eleven o'clock and eleven-thirty, did you see [20] anyone else interfere with that bundle?

A. No, sir, I did not.

Q. Did you have it under your observation during that whole half-hour? A. I did.

Q. Did the defendant and Flier have any conversation at that time?

A. They spoke—on the 17th of the month I am speaking of—but I am not in a position to state

(Testimony of Thomas E. McGuire.)

what they said. They spoke in a lower tone than usual. I couldn't swear to what they did say on that occasion.

Q. Going on to the 28th day of January, Mr. McGuire, were you at the Star Dust on that day?

A. No, sir, not on that day, I was not.

Mr. Davis: I believe that is all of this witness.

Mr. MacInnis: No questions.

The Court: That is all. I think we will take a recess.

(Recess.)

WILLIAM H. GRADY

called as a witness on behalf of the Government; and being first duly sworn, testified as follows:

The Clerk: State your name to the Court.

A. William H. Grady. [21]

Direct Examination

By Mr. Davis:

Q. Mr. Grady, what is your occupation?

A. Agent of the Federal Bureau of Narcotics.

Q. Directing your attention to the months of January and February of 1946, were you one of the agents engaged in making observations and investigations in the premises known as the Star Dust Bar on Sutter Street? A. I was.

Q. Directing your particular attention to the fifth day of January of that year, were you in the baggage room of the Star Dust Bar?

A. Yes, sir.

(Testimony of William H. Grady.)

Q. At what time did you enter?

A. Approximately between eight and eight-thirty p.m.

Q. Did you have an occasion to see the defendant on that day? A. Yes, sir.

Q. At what time did you first see him?

A. Approximately eight thirty-five I saw Frank Flier followed by the defendant Renaldo Ferrari leave the Star Dust Bar, the rear door, and walk to the door and enter the liquor room.

Q. Where were you? From what position were you observing that?

A. To the best of my recollection it was Position No. 1, Observation Position No. 1 on the map.

Q. That was the section of the wall that looked out into the [22] hall way?

A. Into the hall way, yes, sir.

Q. What, if anything, did you observe as the defendant entered the hall way and approached the door of the liquor room?

A. I observed Flier first open the door and first observed a movement of the stack of beer cases. Then Flier entered the room and closed the door, and shortly thereafter Ferrari came up and rapped on the door. Flier opened the door and then Ferrari entered.

Q. Did you observe anything which transpired on the inside of the liquor room?

A. Yes, sir.

Q. From what position were you observing that?

A. The different observation positions listed on the map as 3, 4, 5 and 6.

(Testimony of William H. Grady.)

Q. What, if anything, did you observe?

A. I observed the defendant with Flier in the liquor room. I saw Flier standing with a package open in his hand with a pearl-handled knife, a small blade, and I observed him hand this package and the knife to the defendant Ferrari, and I saw the defendant Ferrari place a small quantity of the powder from the paper package on the end of the knife and hold it up to his nostrils and inhale or draw the *power* into his nostrils.

Q. What, if anything, did you observe next?

A. I then observed Flier and the defendant Ferrari go to leave the liquor room. I then changed position and went back to Position No. 1, Observation Position No. 1 on the map, and I saw Ferrari walk into the hall way, and Flier a few seconds later closed the door and joined Ferrari, and they walked together into the bar.

Q. Did you ever see the bindle again which you had seen in the room on that evening?

A. Yes, sir.

Q. When did you next see that?

A. I saw that at approximately 10:10 p.m., when Agent McGuire—I held the door of the baggage room open. Agent McGuire went out and removed the bindle and brought it into the baggage room, and we took a portion of the powder that was on the inside of the bindle.

Q. Did you see Agent McGuire remove the bindle?

A. To my recollection I would say that I did. To the best of my recollection I would say that I did.

(Testimony of William H. Grady.)

Q. I will show you Government's Exhibit No. 1 For Identification. Is that the package into which Agent McGuire or you put the contents of the sample you had taken from the bindle?

A. Yes, sir. This is identified with my initials.

Q. Now, directing your attention to the 17th day of January, were you in the Star Dust Bar on that occasion?

A. Yes, sir. [24]

Q. Did you see the defendant there at that date?

A. Yes, sir.

Q. When did you first see him?

A. About eleven thirty-five p.m.

Q. At first time had you first entered the store-room previous to that?

A. Previous to that? To the best of my recollection, at approximately seven p.m.

Q. What did you observe at 11:35 when you saw the defendant?

A. I observed the defendant, Flier and Ferrari—I observed the defendant Ferrari and Flier enter the liquor room. Flier entered the room first and to my recollection—I was watching through the observation post, on the inside looking into the liquor room, and as the door opened I see Flier reach down and remove the bindle between the—from the hiding place between the third and fourth beer case, and come inside the door with Ferrari right behind him. Flier closed the door. It has a Yale lock, a spring lock. It was closed and locked. Flier first used from the bindle in the manner which I have previously described, using a small silver-bladed

(Testimony of William H. Grady.)

knife, with which he inhaled some of the powder from the package. Ferrari then used the powder in the same manner. The package was wrapped, put back—folded back in the same position—and as they left, Flier returned the package to the hiding place. [25]

Q. This bindle that you saw them use, when did you first see that package that evening?

A. Approximately a half-hour before—around eleven—between 10:40 and 11 p.m.

Q. And under what circumstances did you see that?

A. At that time Agent McGuire removed the bindle from between the third and fourth beer cases, from the hiding place, brought it into the baggage room, and we removed a sample of the bindle at that time and retained a sample for ourselves, re-folded the bindle and put it back between the third and fourth beer cases.

Q. Between ten o'clock and ten-thirty when you saw the defendant use that bindle, did you have the bindle under your observation or the hiding place? A. Yes, yes, I had.

Q. Did you see anyone else interfere or move the bindle? A. No, sir.

Q. I will show you Government's Exhibit 3 for Identification and ask you if that is the package into which you or Agent McGuire in your presence placed the sample which you had taken from the bindle? A. Yes, sir.

(Testimony of William H. Grady.)

Q. Now, directing your attention to the 28th day of January of that year, were you in the Star Dust Bar baggage room on that occasion? [26]

A. Yes, sir.

Q. Did you see the defendant on that occasion?

A. Yes, sir.

Q. What time did you see him?

A. At 5:05 p.m. on the 28th the defendant Ferrari, together with Bruno and Flier entered the liquor room of the Star Dust Bar. Flier came first, and as he opened the door I was making my observations from the places on the inside of a liquor room. I saw Flier remove the bindle from the hiding place, the beer cases. Flier walked into the liquor room, followed by Ferrari and Bruno. Flier then opened the package that he had taken from the beer case, and using a small knife, sniffed part of the contents, and then handed the package to Bruno and Ferrari, and they in turn sniffed some of the contents of the package. Flier then refolded the package and placed the narcotics back in the hiding place.

Q. Had you seen the bindle which they used in the room on that occasion which you described any other time during that evening? A. Yes, sir.

Q. At what time? A. At 8:50 p.m.

Q. Under what circumstances did you see it at that time?

A. At that time with Agent Hays. Agent Hays held the door as I went to the beer cases and re-

(Testimony of William H. Grady.)

moved the bundle from the [27] hiding place and took a sample therefrom and returned the bundle back to the hiding place.

Q. I will show you Government's Exhibit No. 5 for Identification and ask you if this is the package into which you placed the sample taken from the bundle at the time you described?

A. Yes, sir.

Q. Do you see your initials?

A. That is my initials.

Q. When were they placed on there?

A. At the time this package was made up.

Q. To whom did you give this package?

A. I delivered that package to Agent Briscoe.

Q. What time did you take the sample?

A. At 8:50.

Q. What time did you say they had used the bundle in the room? A. 5:05.

Q. From 5:05 to 8:50 did you have that hiding place under observation? A. Yes, sir.

Q. Did you see anyone else interfere with the bundle? A. No, sir.

Q. By the way, Mr. Grady, during this investigation approximately how many agents worked on it?

A. There was approximately eight—as a guess I would say [28] eight agents. It might have been six or ten, but there were approximately eight.

Mr. Davis: I believe that is all.

Mr. MacInnis: No questions.

The Court: That is all.

HENRY B. HAYS

called as a witness on behalf of the Government; and being first duly sworn, testified as follows:

Q. (By the Clerk): State your name.

A. Henry B. Hays.

Direct Examination

By Mr. Davis:

Q. Mr. Hays, what is your occupation, please?

A. Narcotics Agent.

Q. How long have you been engaged in that occupation?

A. I have been with the Bureau of Narcotics since 1936. Prior to that I was with the Bureau of Internal Revenue Department.

Q. Mr. Hays, were you one of the agents who conducted the investigation in the Star Dust Bar?

A. I am.

Q. Directing your particular attention to the 17th day of January, 1946, did you have occasion to be in the baggage store room in the basement of the Star Dust Bar? [29]

A. Yes, sir.

Q. Did you observe the defendant on that occasion?

A. I did.

Q. At what time did you observe him?

A. I was present with Agents McGuire, Grady and Briscoe. At approximately 11:35 p.m. the defendant and Frank Flier came out of the bar room and entered the liquor store room, and as Flier opened the door he stooped down to run his hand under a stack of beer cases which were stacked

(Testimony of Henry B. Hays.)

along the hall way next to the door, and he removed something. I couldn't see his hand. I could see part of his body, his elbows or arms go under the beer cases. The beer cases at that time—there was about six or seven which was stacked up a little higher than the door. I could see the top of them move. And then I went to the opening and looked into the liquor store room and I saw Frank Flier with a package, a small knife, sniffing some white powder which he removed with the blade of the knife—sniffed it, and passed the package to the defendant, who used it in the same manner with the knife and sniffed it up his nose. And then they left, and as they left I went outside and I saw Flier do the same thing before he closed the door and go under the empty beer cartons, moved and placed something there.

Mr. Davis: I believe that is all of this witness.

Mr. MacInnis: No questions.

The Court: That is all. [30]

ELMER A. BRISCOE

called as a witness on behalf of the Government; and being first duly sworn, testified as follows:

Q. (By the Clerk): State your name to the Court. A. Elmer A. Briscoe.

Direct Examination

By Mr. Davis:

Q. Mr. Briscoe, during the months of January and February, 1946, what was your occupation?

(Testimony of Elmer A. Briscoe).

A. I was an Agent for the U. S. Bureau of Narcotics.

Q. Directing your particular attention to the fifth day of January of that year, did you have an occasion to be in the baggage room in the basement of the Star Dust Bar?

A. No, I did not, not on that day.

Q. Not on the fifth? A. No, sir.

Q. Directing your attention, then, to the seventeenth day of January of that year, did you have an occasion to be there at that time?

A. Yes, I was in the room at that time.

Q. I will show you Government's Exhibit No. 3 for Identification, and ask you——

The Court: Wasn't he concerned with both of them?

Mr. Davis: Yes.

The Court: Why don't you do it all at one time, unless there is some objection? [31]

Mr. MacInnis: No objection.

Mr. Davis: Exhibit 1 I believe he received at a different time.

Q. I will show you Government's Exhibit 1.

Mr. MacInnis: I would be willing to accept a stipulation as to what this witness will state, Mr. Davis.

Mr. Davis: My only purpose in introducing Mr. Briscoe's testimony is to show that on all three of these occasions I believe he received these exhibits, 1, 3 and 5, and that he kept them in his custody until he delivered them to the chemist.

(Testimony of Elmer A. Briscoe).

Mr. MacInnis: That is all right. He stated he was not present on January 5.

Mr. Davis: No, but I can establish that he got this from Agent McGuire on the same day at some different place.

Mr. MacInnis: I will stipulate that he would testify to that.

The Court: McGuire has already testified that he delivered this to Agent Briscoe. I do not recall what he said when he did that.

Mr. MacInnis: That is correct.

Mr. Davis: The stipulation will be if this witness testified he would testify as to Exhibits 1, 3 and 5 for Identification, that as to Exhibits 1 and 2, he received them from Agent McGuire. [32]

The Witness: That is correct.

The Court: Exhibits 1 and 3.

Mr. Davis: 1 and 3, from Agent McGuire; Exhibit 1 on the fifth, Exhibit 3 on the seventeenth.

Q. Is that correct?

A. Yes, that is correct, Mr. Davis.

Mr. Davis: And that he kept those in his custody until he delivered them to the Government chemist, and as to Exhibit No. 5, that he received that from Agent Grady on the 28th.

The Witness: That is correct.

Mr. Davis: And kept it in his custody until he delivered it to the chemist. That is all.

The Court: Is that acceptable?

Mr. Davis: Yes. If the Court please, at this time the Government will move that the exhibits

(Testimony of Elmer A. Briscoe).
previously offered for identification be accepted in evidence, and the Government will rest.

Mr. MacInnis: No objection.

The Court: Very well, they may be admitted.

(U. S. Exhibits 1 to 6, inclusive for identification were thereupon received in evidence.)

Government rests.

Mr. MacInnis: I have one or two motions, your Honor.

The Court: Very well. [33]

Mr. MacInnis: We move, at the outset, that the Court make its order quashing and dismissing the first count of the indictment in this case against the defendant Ferrari upon the ground of a fatal insufficiency between the allegations in that count and the proof as offered here, the Government having submitted its evidence and having rested.

The Court: What is the basis of that motion?

Mr. MacInnis: I thought it was rather obvious, but perhaps it is not. The count charges that upon a certain day, the 5th day of January, which has been alleged with definiteness by the witness and included in the question of the prosecutor, that Vincent Bruno and Renaldo Ferrari committed the overt act set forth in that first count. The evidence failed to mention Vincent Bruno. The evidence is, according to the testimony of Mr. McGuire, that Frank Flier and this defendant committed a certain described act upon that date. It would be difficult for me to conceive how a defendant or his attorney could prepare the defense of a case if a variation

of that sort be not deemed a fatal insufficiency or a fatal variance between the pleading and the proof. It is two different people. One could not possibly establish a defense if the Government is permitted to allege that the defendant and A committed an offense upon a particular defendant, and to substantiate that by proof at the time of trial that it was not the defendant and A but the defendant and B. The defendant would be entirely [34] at a loss. It seems to me the implications in that variance can so clearly be seen by the court; not much argument is required. Your Honor can see just what would happen if one attempted to defend a case of that kind. Your Honor can see, of course, these defendants have been charged together, all fourteen or fifteen of them, but that is hardly an answer.

The Court: Suppose the evidence showed this defendant admitted this offense, itself, although he is charged with something else; as long as it shows he participated in it, is anything else material?

Mr. MacInnis: That is like saying that a man could be indicted for robbing one place with someone and be prosecuted upon evidence that he committed a robbery in another city.

The Court: That, of course, would be a variance: There is no question about that. What have you to say about that, Mr. Davis?

Mr. Davis: I believe, your Honor, that inasmuch as we are not proceeding against the defendant Vincent Bruno in this case, who was dismissed from

it, I do not believe it is a fatal variance, as long as we charge the defendant committed the offense with some person on that day and then we prove that he did.

The Court: In other words, you would charge the defendant with having committed the offense on that day, alone.

Mr. Davis: We could have left Vincent Bruno, Flier, or [35] anyone out of the count entirely and merely charge Flier with committing the offense.

Mr. MacInnis: Here are the deeper implications, your Honor, as they would appear to me, although, of course, I am a biased observer. These matters are started in much the same fashion, I suppose. An investigation is had. Agents testify before the Federal grand jury. The grand jury receives evidence, returns a true bill, and the United States Attorney is taken into consultation. There are sworn statements made before the grand jury; indictments are framed in language known to judges and lawyers. Now, obviously some person took the stand before the grand jury and said that on January 5, 1946, Vincent Bruno and Renaldo Ferrari committed a certain crime. That was accepted by the grand jury, accepted by the United States Attorney, and the formal pleading charging the defendants contained that language. The only document to which he could look in order to prepare his defense was that pleading. Various attorneys, including myself, in the long course of the preparation of this trial, made motions for bills of particulars. Upon legal rulings, of course, those motions

were denied. The only way one could prepare a case charging Bruno and Ferrari did a certain thing on a certain date would be this way: "Ferrari, did you do this?"

If he said "No," he would go to Bruno and say, "Did you and Ferrari do this?" If Bruno said "No," you would think [36] that would be your defense, but you come into court and you find the United States Attorney and the Government agents say nothing about Mr. Bruno but have the offense committed with an entirely different man, Mr. Flier. I think it is no answer for the court or for the United States Attorney to say, "We have dismissed Bruno and we are proceeding against Ferrari alone." We obviously cannot prevent the counsel or the court from dismissing the particular case. It is none of our business whether the court dismissed another defendant, but it is no answer to say that, "We could have proceeded against him alone." Of course, they could have, but the information given to this defendant to prepare his case, which I think certainly goes to the heart of the problem on this count, was information to say that he committed an act with Bruno.

The Court: I do not think there is any merit in this. I will deny the motion without prejudice. If after I have heard all the evidence, if there is to be more evidence, in case I come to a different conclusion I can always change my mind.

Mr. MacInnis: The other point I will try to make as briefly and as informally as I can, because I will assume, even though I did not sit through

the entire course of the trial which took place yesterday and today, United States vs. Pitta, I have some information as to the rulings of the court. The second motion is for a dismissal of all [37] of the charges upon the ground that the corpus delicti has not been proved. I made a statement at the outset inviting the court to scrutinize carefully the language of the charge as compared to the evidence offered in support of it. The charge in each instance is identical. The charge is that on certain respective dates Ferrari and others either concealed—I think the technical language in each instance is, “concealed and facilitated the concealment of” certain described bindles of heroin. He is not charged under any section of our law but the Jones-Miller Act, as embodied in United States Code Section 174. He is not charged with any other act under the Jones-Miller Act, except concealing and facilitating the concealment of. It is my understanding, I think—I may not be entirely correct—that your Honor has taken the position, which is indeed endorsed by the statute, itself, that possession of a forbidden or contraband narcotic raises a presumption which is sufficient to prove the case unless repelled by testimony given by the defendant. That is true where possession is the overt act which is charged. In this case I cannot see where there is any evidence accepting as true every utterance of the agents that there was any possession of the prohibited narcotic upon the part of the defendant Ferrari.

The Court: The statute does not say anything about possession. [38]

Mr. MacInnis: It seems to me the statute has the presumption, at the end of the statement of the law.

The Court: The second part of the statute says proof of possession in the trial is sufficient to establish violation of the statute unless the possession is satisfactorily explained. But the statute, itself, that part of it that describes the acts that are contrary to law, speaks of importation and receipt, conceals, buys, sells or in any manner facilitates the receipt or sale.

Mr. MacInnis: I probably express myself poorly there, your Honor. Here is what I want to say: I have made a serious attempt to read the cases discussing the factors or concealment and facilitating the concealment of. It may well be your Honor's reading of the same cases is deeper than mine, because you encounter these cases more often. There is a 1940 case called *King vs. United States*, reported in Volume 41 Fed. (2d), I think it is at page 751. That case is typical of the cases affirming the judgments of conviction for the crime charged here, that is, concealing and facilitating the concealment of. It arose in this circuit, the Ninth, and involved an appeal from a decision rendered in the court of Hon. A. F. St. Sure. The facts in that case were these, and they seem by inference to support the proposition that in order to sustain a conviction under this precise section there must be an overt act which falls into the common sense definition [39] of concealing or facilitating the concealment of.

The defendant in that case was a Canadian Express Company employee. There was a ring of persons dealing in narcotics. This defendant was observed by agents. He had access to the corral of the United States Customs House here, was in and out. He had stolen a sticker from the customs authority and he surreptitiously placed the label on a trunk. The only import of that act is that had it gone unnoticed, this trunk would have gone to the customs officials without any further investigation. The act did not bear further explanation. The trunk was opened and it was found to be filled with opium.

(Further discussion of the case in question.)

The Court: The testimony shows here he had it in his hand, put it on a knife, and sniffed it.

Mr. MacInnis: Yes.

The Court: Isn't that possession from a common sense viewpoint?

Mr. MacInnis: Your Honor and I apparently do not agree on that. But going further than that, you transpose possession and you say not only was the unlawful use of this drug possession, but it constituted concealing and facilitating the concealment of. Your Honor will note in the testimony it was not in any instance Ferrari who was said to have taken the bundle from its hidden position. He is not said to have observed that transaction. He is not said to be the one who [40] replaced the bundle in its hidden position.

The Court: I appreciate all of that, Mr. MacInnis, but at that time, acting according to the

testimony in complete concert with the other two men whose names have been mentioned, or the three men whose names have been mentioned, he participated with them, though he did not physically put his hands on the bundle, to remove the bundle from its place of concealment, or to replace it. Each of the three men used the opium after it was removed from its place of concealment, and he was there along with them. It was replaced in a place of concealment. I do not think it takes any great stretch of the imagination to hold that under any common sense viewpoint the defendant, according to the state of the record, was a participant in both concealment and facilitating the concealment, and also was in possession. I do not see what stronger kind of evidence one would need.

Mr. MacInnis: I won't prolong the argument.

The Court: I understand the point, but I certainly could not hold the evidence is lacking, I mean sufficient evidence as against a motion for judgment is not present.

Mr. MacInnis: How far does your Honor conceive this statute should be applicable? If a man known to be a user or a person having actual possession upon himself of a narcotic, comes up to another and offers it to him, is the offeree or the other person guilty of a crime, if we go no further?

The Court: If you will read the proceedings in connection with the Jones-Miller Act, you will find there why the second part of section 174 was put into the act. The difficulty in detection and enforcement is so great, Congress indicated, this most unusual provision was put into the section: If you

show possession that is sufficient evidence to show a violation of the statute, unless there is a showing to the satisfaction of the jury on the trial of the case, satisfactory explanation as to that possession. In other words, a man might possibly have had possession of the narcotic innocently. It is possible. There are conceivable circumstances under which that might well happen. The burden, however, is put upon anyone who is in possession of a narcotic drug to explain the possession. That is the philosophy behind it, and therefore it does not require the niceties of proof that are required for a violation of other statutes. That is why I would say that it is not necessary for a court to scrutinize the technical nicety as long as possession is shown, in the case of proof under this statute, as it might be under any of the other criminal statutes. You asked me to more or less state my view in the particular instance you mentioned. That is the way I feel about it. I have never read any decisions to the contrary, but if some higher court wants to construe that statute more narrowly, some other judge might do that. But that is my view. I will deny the motion. [42]

Mr. MacInnis: How long does your Honor wish to continue?

The Court: I think we will run along a while.

Mr. MacInnis: Anything your Honor says.

The Court: I have another one of these cases set for tomorrow. We will run along until five, if you think we could finish by then.

Mr. MacInnis: Call Mr. Henry Gourdine, please. .

HENRY J. GOURDINE

called as a witness on behalf of the defendants, and being first duly sworn, testified as follows:

Direct Examination

By Mr. MacInnis:

Q. Mr. Gourdine, you know the defendant, Renaldo Ferrari, do you? A. Yes, sir.

Q. In the month of January, 1946, which is the month with which the court is concerned in the charges against Mr. Ferrari, can you tell us generally where you were?

A. Just at Los Angeles, California.

Q. About what date did you go to Los Angeles?

A. Toward the middle of December.

Q. Of 1945? A. Yes, 1945.

Q. You were in Los Angeles from December, 1945, up to about what time? [43]

A. Oh, possibly up to the 10th to the 15th of February.

The Court: Isn't this witness a defendant?

Mr. Davis: Yes, your Honor.

The Court: In a case pending here?

Mr. MacInnis: Yes, your Honor.

The Court: His attorney is not here? Are you his attorney?

Mr. MacInnis: No, I am not, your Honor.

The Court: Who is his attorney?

Q. (By Mr. MacInnis): Who is your attorney?

A. Mr. McDonald.

The Court: I think you had better be careful

(Testimony of Henry J. Gourdine.)

not to question this witness about something that might affect his own case. I do not know what the charge is.

Mr. MacInnis: It is my understanding his attorney knows he is coming here.

The Court: You realize as much as I do the obligation you would be assuming now asking him questions.

Mr. MacInnis: I would rather not assume the obligation without some explicit direction from his attorney, since your Honor has brought that problem up.

The Court: I haven't the faintest idea what you are going to ask him about. But I remembered the name. This case was set for trial, and it had to be continued, either because the defense attorney was sick, or some Government witness was sick.

Mr. Davis: Yes, your Honor, this defendant is a defendant [44] in another case.

The Court: In this same case?

Mr. Davis: Yes, he is a defendant in this case.

The Court: I do not see his name here. Oh, yes, Henry Gourdine.

Q. (By Mr. MacInnis): Mr. Gourdine, have you discussed with Mr. McDonald the fact that you were going to testify in the case against Renaldo Ferrari?

A. Well, to a certain extent, yes.

Mr. MacInnis: I do not want to do anything, as his Honor points out.

(Testimony of Henry J. Gourdine.)

The Court: You will have to make your own decision in the matter. I am calling it to your attention. I observe now Mr. Davis says he is a defendant in the case. His is one of the cases that is set next week.

Mr. Davis: No, your Honor. This one was continued at Mr. McDonald's request.

The Court: This man is a defendant in the case. I do not want to tell you not to do anything that you feel you should do in another case, but that is a rather serious responsibility.

Mr. MacInnis: Here is what I will do, your Honor: I can defer putting him on the stand until later, and I will discuss every element of the testimony which we wish to adduce with Mr. McDonald.

The Court: It may be it has no connection with himself, but [45] his attorney is not here. It would be more prudent to find out from Mr. McDonald if it is all right for him to testify.

Mr. MacInnis: I would rather accept your Honor's suggestion.

The Court: You may step down.

Mr. MacInnis: Mr. Bruno.

The Court: The conviction of Bruno was not in this case?

Mr. Davis: No, your Honor.

The Court: That was in a separate case unrelated to the charge here?

Mr. Davis: Yes.

Mr. MacInnis: I understand, your Honor, the other charges against the defendant Bruno have been dismissed.

The Court: Yes.

Mr. MacInnis: If that is not so I will have a similar problem.

Mr. Davis: No, that is not so, your Honor. All the charges against Bruno, Flier, and Billeci have not been dismissed. They have only been dismissed as to the counts in which they were connected with Pitta or with this defendant. But there are several separate counts in this indictment against Bruno and Flier.

Mr. MacInnis: Then, your Honor, I am in a peculiar position. We came here yesterday. While I did not ask affirmatively for any continuance, the only reason I would have [46] been unwilling to go ahead yesterday at ten o'clock would be because of the fact that I intended to call other persons who were involved in the same charges, and I had understood by the end of yesterday to these three men whose names I have given the court the matters would be terminated. Now, of course, I do not want to be in the position of jeopardizing any other person, and I won't be put in that position, but it has been my understanding from everything except the last statement made by Mr. Davis that the cases were over.

Mr. Davis: I do not believe that is the case, your Honor. I do not know. So many things have transpired here in the last couple of days in dismissals

that there were entered; but I do know this: In any case—for example, in the case yesterday of Joseph Pitta, where he was connected with any other defendant, Flier, Bruno or Billeci, I dismissed them in those counts so we could proceed to trial.

The Court: And they are dismissed——

Mr. Davis: As to this defendant.

The Court: As to this defendant.

Mr. Davis: But I do not think as yet I have entered a general dismissal of 30449 as to all defendants.

The Court: If you do not intend to ask this witness Bruno anything except concerning matters pertaining to your client's case, I do not see any objection to putting him on.

Mr. MacInnis: It is hard to keep from going over the threshold, [47] your Honor.

The Court: That is something you will have to decide, yourself. I can't direct the United States Attorney to dismiss the charge against a man so you can use him as a witness.

Mr. MacInnis: I was reasonably sure I had heard him make those dismissals. I did not, of course, write down the names of the particular counts.

Mr. Davis: There would not have been any occasion for me to dismiss them, unless I dismissed them previously in connection with their own cases: For example, when Bruno was convicted and sentenced I still had to keep this other indictment alive, and I do think I dismissed it as to them, and that

is the only occasion I would have had to dismiss as to Bruno, Flier, or Billeci, generally, because I only had to dismiss in the particular counts, as in Mr. Pitta's case yesterday. I may be mistaken. The state of the record may show I have dismissed them, but I do not think it does.

Mr. MacInnis: I am positive I heard Mr. Davis use this kind of language, and I would like him to correct me if I am wrong, that he said, "We are not going to proceed against certain named defendants further."

Mr. Davis: At that time I did not intend to proceed. As a matter of fact, this may cause me to change my mind.

Mr. MacInnis: Between the two things, your Honor, of [48] requiring me to proceed at present without any knowledge, and on the other hand required by the United States Attorney to investigate his own record and determine what cases are still in existence——

The Court: Counsel, there is nothing I can do to help you in that regard. I am not going to make any orders directing the United States Attorney to dismiss a case.

Mr. MacInnis: I do not ask that, at all.

The Court: If you want to use a witness you will have to make up your mind whether you are going to use him, or not. I am not going to postpone the case to see what the United States Attorney is going to do in some matter pending against the witness before you use him. That would throw litigation into complete confusion.

Mr. MacInnis: It seems to me it is a little confusing if we do not know now whether there are in existence any cases against these men I have named, because if they are important witnesses for this suit, surely he should be given every right to call them.

The Court: I am not stopping you from calling them. You can call him and put the man on the stand. All I called your attention to was, in the case of the other witness, he had another case pending entirely separate from this case.

Mr. Davis: In other words, your Honor, I think I can clarify it this way. At the time these men were tried I made the [49] representation to your Honor and to their attorneys, that is, Bruno, Flier and Billeci, that if they were convicted in the cases in which they went to trial, the Government did not intend to proceed against them in other cases which they had pending. I do not believe as yet we have dismissed those cases.

The Court: That is my recollection.

Mr. MacInnis: That is mine, too.

Mr. Davis: My third observation is this, that that was my opinion at that time. I did not make any guarantee that if something else transpired in the meantime which might change my position, I would not proceed to try them in these other cases. Merely because Mr. MacInnis wishes to use them as witnesses cannot force me to dismiss a case that I have pending against a man. If he wishes to use him as a witness, that is all right with me. I may

use him later. But I am not going to dismiss so that he can use him as a witness with impunity.

Mr. MacInnis: I do not ask counsel to do that, but I think Mr. Davis, with all respect to him, has taken a rather anomalous position. My recollection now is apparently the same as his and your Honor's as to what he said. But he says now "That was my intention at that time. I didn't guarantee at some future time, if something changed, I would not change my mind." I do not know how we can proceed in this kind of [50] matter if that is his ambiguous position.

Mr. Davis: It is not ambiguous at all. I can be very plain about it. Suppose one of these defendants took the stand and from information I have at my disposal, in my opinion, committed bald perjury in order to try to get acquainted some of the other men who were working with him, saying, "This man was never in my place"—that probably would change my opinion as to whether I would prosecute him further. If he merely takes the stand and tells the truth, he probably would not be prosecuted. But if he took the stand, after being convicted and sentenced, and tried to whitewash other defendants whose cases are still pending, that might change my position. That is my frank statement. That is why, as your Honor knows, in cases where you have co-defendants, we put off sentencing until the disposition of the case. I am certainly not going to remove all possibility of further jeopardy against these defendants so that they can take the stand

without having any feeling in the matter, and tell whatever story they wish. However, if they take the stand and tell what I know or believe to be the truth, I am still of the opinion I would dismiss as against them.

Mr. MacInnis: I consider Mr. Davis' statement an impropriety, that he should tell your Honor what he knows to be the truth, any more than I should tell what I know to be the truth.

The Court: I consider this whole argument completely [51] extraneous to the issues in this case and I am not going to be concerned with it any longer. You can put on any witnesses you want. I made merely a suggestion to you before in connection with the other witness, Mr. Gourdine, who was a defendant in another case, as well as a defendant in this case, in the absence of his attorney, and for his protection. I suggested to you as an attorney, and also the court, that it might be well to look into the matter further before you put a defendant in another case on the witness stand. That is in the interest of justice. That is the duty of a judge as well as an attorney, and an officer of the court. You elected to withdraw that defendant for the time being. Now you want to put on a defendant, another man who has already been convicted in another case and is under sentence. If you want to put him on the witness stand, that is up to you.

Mr. MacInnis: Very well. I will stay within the limitations of the two charges here which are dismissed as against this defendant. Mr. Bruno, will you step up, please?

VINCENT BRUNO

was called as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

The Clerk: State your name to the court.

A. Vincent Bruno.

Mr. MacInnis: Your Honor, may I withdraw the pictures [52] introduced this morning in the Pitta case? They were pictures belonging to me, which I loaned the other attorneys.

The Court: Very well.

Mr. MacInnis: I think they were introduced for identification.

The Court: They were marked for identification.

Mr. MacInnis: But they were refused entry into evidence.

The Court: They were marked A, B, C and D.

Mr. MacInnis: It is my understanding your Honor refused them entry in evidence on the ground of lack of foundation.

The Court: In the case of United States vs. Pitta.

Mr. MacInnis: Solely to throw some light upon what could have been seen and to what extent it could have been seen, I am going to introduce those.

Q. Mr. Bruno, are you familiar with the bar and tavern here in San Francisco known as the Stardust? A. Yes.

Q. Are you familiar with the fact that there was a back room attached to that particular tavern?

A. Yes, sir.

(Testimony of Vincent Bruno.)

Q. Have you been informed, or have you seen with your own eyes certain physical facilities where Government agents stationed themselves in the course of conducting an investigation?

A. I do not understand the question.

Q. Have you seen the place pointed out to you as the spot where certain Government agents placed themselves for the purpose of [53] looking through peepholes? A. Yes, I did.

Q. Were you familiar with those premises in the months of January and February of 1946?

A. Very well.

Q. Were you present at the time certain photographs of various aspects of the interior of those premises were taken by a professional photographer? A. No, I was not.

Q. Do you know the date these pictures were taken?

The Court: The photographer said some time in May, 1946.

Q. (By Mr. MacInnis): Were you familiar with the appearance and aspect of those premises in the month of May? A. Yes, I was.

Q. Between the months of January and February, continuously up to the end of the month of May, at least, 1946, was there any change?

A. No, not with the back room.

Q. The premises were exactly the same, so far as any photographs of the back room would be concerned, entirely throughout the month of May as

(Testimony of Vincent Bruno.)

they were throughout the previous months of January and February, is that correct?

A. Yes, they were.

Mr. Davis: If the court please, I am going to object to the introduction of these photographs on the ground the proper [54] foundation has not been laid. The offense was committed in January, and the pictures were taken in May. The only attempted foundation here is that this witness is familiar with the premises and as a matter of his opinion he can say that those pictures represent the condition in January, and I do not think that is a sufficient foundation.

Mr. MacInnis: That is the only foundation ever necessary. A witness, to identify a picture, only has to state that the picture is a fair representation of the particular object, and the only connection under the law——

The Court: I am not going to waste any time on it. Do you want to offer these photographs in evidence?

Mr. MacInnis: Well, I do.

The Court: All right. I will admit them in evidence.

Mr. MacInnis: We formally offer these pictures in evidence and ask that they be labeled Defendant's Exhibits in the order in which they are.

The Court: These are the same ones as in the other case?

Mr. MacInnis: They are the same group. They are supplemented. Apparently not all of them were presented in the previous case.

(Testimony of Vincent Bruno.)

The Court: Has this witness seen them all?

Mr. MacInnis: I will show them to him, your Honor.

Q. I show you a picture labeled "Photo of Merchandise Shelf, Showing Peepholes Behind Merchandise. The shelf is 26 inches [55] wall to front, 38 inches from ground to peepholes. Peepholes are 3½ x 6½ inches——"

The Court: I do not think you need to go into all of that. I will save a great deal of time for all parties concerned. The photographer in the case of *United States vs. Pitta* testified he took these photographs in May, 1946, in these premises out there.

Mr. MacInnis: Yes.

The Court: On the strength of that testimony in the other case I will admit them in evidence in this case.

Mr. Davis: I do not like to delay the matter, but, of course, there were only four pictures that the photographer testified he took in May, 1946, or any other time. These others appear that they might be pictures taken there, but frankly, no one has identified those.

Mr. MacInnis: I have not come to them yet.

The Court: Have you got the photographer here?

Mr. MacInnis: No, I can bring him, but that would not be a necessity. If I drew a picture in pencil and showed it to him——

The Court: Do you want this witness to testify that those pictures show to the best of his recollection the condition of these rooms in May, 1946?

(Testimony of Vincent Bruno.)

Mr. MacInnis: That is the question I will put to him, and that is the answer I expect, your Honor.

The Court: Is that correct? A. Yes.

Q. Would you say that that is so?

A. I would have to look at them first.

The Court: Show them to him.

Mr. MacInnis: It is my information the premises were untouched.

The Court: Well, I heard other witnesses on that. I am not going into the question of the weight of this testimony; I am not going to spend all day with these photographs.

Mr. MacInnis: I do not claim it is the whole case, your Honor.

The Court: I did not say that. I said I am not going to spend all day on these photographs.

Mr. MacInnis: Your Honor, I am not trying to spend all day on them. I am just trying to put them in for whatever they may be worth.

The Court: But you started to read from each legend on them.

Mr. MacInnis: I started to read from them because Mr. Davis said he had no knowledge of what they were. If you do not want me to say what they are, I will not do so.

The Court: Give the bunch of photographs you have in your hand to the witness and let him look at them, himself, and after he has looked at them, ask him whether those photographs [57] show the appearance of the place in May, 1946.

Mr. MacInnis: I might say this while he is look-

(Testimony of Vincent Bruno.)

ing at them. I do not subscribe to the proposition that it was impossible to see anything from that room. I think there were some difficulties attendant to observation, and for that I am going to offer the pictures, and I think they have some weight in that particular. I would not be so foolish to give them to the court and say they could not see anything.

The Court: I do not know what you mean by that. I am admitting them in evidence because you are offering them for some purpose in connection with the defense.

The Witness: There are three here that are not the liquor room. They must be some other rooms. These three are not the liquor room.

The Court: How many have you left there?

A. These are all the liquor room.

Mr. MacInnis: I will offer the group which the witness identified.

The Court: How many are there?

Mr. MacInnis: 8, your Honor.

The Court: All right. Those eight photographs correctly depict the appearance of this room in May, 1946?

The Witness: That was the room all the time I was in the place.

The Court: You may mark those eight photographs in evidence, [58] Defendant's A-1 to A-8.

(The photographs in question were thereupon received in evidence and marked, respectively, Defendant's Exhibits A-1 to A-8.)

(Testimony of Vincent Bruno.)

Mr. MacInnis: I will withhold the others and introduce them through another witness. Does your Honor wish to look at them?

The Court: I saw them.

Q. (By Mr. MacInnis): Mr. Bruno, on the 5th day of January of 1946, in the premises known as the Star Dust, in the liquor or storeroom, as it has been called, in those premises did you see Renaldo Ferrari take in his hand a bindle of heroin or sniff any portion of it by use of a knife?

A. Ferrari never did sniff heroin. He always told us never to use it. He told me never to use it. I never seen him in my life take a sniff of it.

Q. You never in your life saw Ferrari sniff heroin? A. Never in my life.

Q. It is your testimony here, "He told us never to use it?" A. That is right.

Q. Will you tell us what you mean by that, and who you mean by "us?"

A. We always talked about it, and he said, "Never use it. You guys are crazy if you ever use that."

Mr. MacInnis: That is all. [59]

Cross-Examination

By Mr. Davis:

Q. Isn't it a fact, Mr. Bruno, that on January 17th, at about 11:35 in the evening you were in the storeroom and saw the defendant use a bindle of heroin? A. I never did in my life.

(Testimony of Vincent Bruno.)

Q. Isn't it a fact that on January 28th, at about 5:25 in the evening, you were in the liquor store-room and saw the defendant hold in his hand a bin-dle of heroin and sniff it in his nostrils by sniffing it off a knife blade?

A. Ferrari never used heroin in his life, never handled it in my presence.

Mr. Davis: That is all.

Mr. MacInnis: No questions.

The Court: Has the Marshal custody of Flier?

The Marshal: No, your Honor. We had no order.

Mr. MacInnis: I was wondering if you still had him in custody.

The Marshal: He is in the County Jail. We have no order to produce him yet.

Mr. MacInnis: May we have your Honor's order that he be produced tomorrow morning at any hour acceptable to the court?

The Court: Did you intend to offer the same kind of testimony?

Mr. MacInnis: Testimony a little more extended from the defendant Flier and testimony of about the same length from [60] the defendant Salvatore Billeci, and the testimony of the defendant Gour-dine, if it meets with the explicit permission of his attorney.

The Court: You mean each of these witnesses is going to say that they never saw the defendant in this case take any heroin?

Mr. MacInnis: More than that, your Honor.

The Court: I am not trying to pump you. I am just trying to find out if there might be some way of facilitating the trial.

Mr. MacInnis: I do not mind your trying to pump me. I will tell you everything they would say. It has been my information during the entire course of this case, not based upon my own client's word to me, but from all the others, to the effect that he hung around with them, that he was in and out, that he was at the Star Dust. It will be his testimony he was there on various occasions, but that he was not engaged in any narcotic traffic, and that he is not a user of heroin, and one of the best items of evidence that I think proves it according to the intendments of human nature, is that Ferrari, who, as I said, is not a saint, is a rather heavy drinker of alcohol. The defendants in this case—and I hope I say this without prejudice to any other person, even those who have been involved in alleged sale transactions with the Government—say that he is not one of them. [61]

The Court: Just a moment, Mr. Marshal. I will cut this short. You want to produce further witnesses on the point that the defendant was not present on the occasions that the agents testified to, and did not have possession of any heroin?

Mr. MacInnis: Not quite that, your Honor. According to what the defendant tells me, he may well have been in the Star Dust on the 17th of January.

The Court: I do not want to cut you off. If the defendant wants to produce any testimony to the effect that he was not in the possession of any heroin

at the place and at the times that have been testified to by the agents, he has a perfect right to so testify, if that is a fact, so far as he was concerned. I am not stopping him from doing that. I just want to find out if that is what you want to do.

Mr. MacInnis: I think the testimony of Flier is so emphatic upon that point it may be that your Honor is going to invite a stipulation as to what the other testimony would be, so as to save time. I would appreciate it if the court could listen to his testimony.

The Court: What is the witness?

Mr. MacInnis: Flier.

The Court: All right. You want him brought here in the morning, then?

Mr. MacInnis: I would deeply appreciate that, your Honor.

The Court: You do not have to put it on that ground. If [62] you want him here, Marshal, bring Flier here at ten o'clock.

Mr. MacInnis: Or earlier, if your Honor wishes.

The Court: Do you want them both here?

Mr. MacInnis: Billeci's testimony will be much to the same import as Bruno's testimony.

The Court: Namely, that he never saw Ferrari taking any heroin, is that it?

Mr. MacInnis: Yes.

The Court: Would you be willing to make the stipulation that if Billeci were called he would so testify?

Mr. Davis: Yes, I will stipulate if he were, he would so testify.

The Court: Would that cover what you want?

Mr. Davis: As to Billeci, I would accept that. As to Flier I think he is an available witness.

The Court: Will the Marshal bring Mr. Flier here at ten o'clock tomorrow morning. Any other witnesses that you will have?

Mr. MacInnis: The only witnesses will be Mr. Gourdine, if his testimony gives the specific permission; the defendant in the other case, Flier, and Ferrari, himself.

The Court: All right. I will continue the trial of this case until tomorrow morning at ten o'clock.

(An adjournment was thereupon taken until tomorrow, Thursday, April 24, 1947, at ten o'clock a.m.) [63]

Thursday, April 24, 1947, 10:00 o'Clock A.M.

The Clerk: United States vs. Ferrari, for trial.

Mr. MacInnis: For the purpose of saving time, your Honor, I understand Mr. Davis is willing to stipulate that if Mr. Nathanson, the photographer who testified in the case of United States vs. Pitta yesterday morning, were to be called here on behalf of the defendant Ferrari, that he would give precisely the same testimony and we in turn would be willing to stipulate that Mr. Davis would subject him to the same cross-examination and that he would give the same answers.

Mr. Davis: I will so stipulate.

The Court: In the case of United States vs. Pitta.

Mr. MacInnis: Yes, your Honor, and in conjunction with that stipulation we would ask for the Court's order stating in effect that the Court would consider that evidence along with the photographs which have been admitted in this case. Mr. Nathanson apparently is the man who took those photographs.

The Court: Very well.

Mr. MacInnis: You will stipulate that he is the person who took the photographs?

Mr. Davis: Oh, yes. The only difficulty for the record is in the other case they were not admitted in evidence.

The Court: It is stipulated that the photographer who [64] testified in the Pitta case, if called, would testify that he took the photographs that were admitted in evidence in this case some time during the month of May, 1946?

Mr. Davis: That is right.

The Court: Will that cover it?

Mr. MacInnis: Yes, your Honor, and his testimony may be deemed incorporated in the record of this trial?

Mr. Davis: That is agreeable.

The Court: All right.

(The testimony of Mr. Gibbs is as follows:)

ROBERT GIBBS

called as a witness on behalf of the defendant, and having been first duly sworn, testified as follows:

Q. (By the Clerk): State your name to the Court and Jury. A. Robert Gibbs.

(Testimony of Robert Gibbs.)

Direct Examination

By Mr. Klein:

Q. Mr. Gibbs, where do you live?

A. 2801 Nichol Avenue in Oakland.

Q. What is your business?

A. I am a photographer by trade, sir.

Q. Are you in business for yourself or employed? A. I am employed, sir.

Q. By whom? A. Mr. Nathanson.

Q. What was your business in the year 1946?

A. Photographer.

Q. Were you employed by Mr. Nathanson at that time? A. Yes, sir.

Q. Are you familiar with the premises known as the Star Dust Bar at 988 Sutter Street?

A. Yes, I was called there last year to take some pictures.

Q. In the year 1946 were you directed to take some pictures at that place? A. Yes, sir.

Q. Did you personally take those pictures?

A. Yes, sir.

Q. You stated you have been a photographer for how many years? A. About fifteen years.

Q. I will show you——

Mr. Davis: I am going to object, your Honor. The proper foundation has not yet been laid. We do not know the date of these pictures yet.

Mr. Klein: I am going to come to it.

Q. I will show you some pictures and ask you whether you took some pictures at that place, and

(Testimony of Robert Gibbs.)

that these represent the pictures that you took (handing pictures to witness).

A. Yes, I took all of them.

Q. When did you take those pictures?

A. Approximately in May. [66]

Q. Of that year? A. 1946.

Mr. Klein: Now, may it please the Court, I submit that I have laid the foundation for asking him to identify these pictures and offering them.

Mr. Davis: Your Honor, obviously the pictures are improper. They were taken in May, 1946, and we are talking about something that happened on one particular day, January 10, 1946.

The Court: What is the materiality of this?

Mr. Klein: I want to show by photograph the the condition of that storeroom with reference to shelves and bottles, and it has been testified to by Mr. Bruno that the condition of those shelves and bottles on those shelves is the same for the last sixteen months.

Mr. Davis: I can't see how there has been sufficient foundation to introduce in evidence and make a part of the record in evidence photographs taken months after this affair.

Mr. Klein: These pictures are offered for the limited purpose of showing the condition of that room, the shelving and the bottles on the shelves.

The Court: Yes, but that does not show the condition of the bottles or the contents on the day that that is charged in this indictment. [67]

(Testimony of Robert Gibbs.)

Mr. Klein: Leaving out the bottles, if it please the Court, they are offered for the limited purpose of showing the shelving.

The Court: I would not allow them in evidence, because that would be error and would be misleading. You can't take something out of a photograph and say you are offering something else in the photograph. You do not need a photograph to show the condition of the shelves. The witnesses have described it. If you had a picture of the empty shelves, that might be one thing. I think the evidence is completely without foundation. I will sustain the objection.

Mr. Klein: Exception.

The Court: That is all.

Mr. MacInnis: Call Mr. Flier, if the Court please. While we are waiting, I would like to make this statement about the witness Gourdin, who was called yesterday. I was grateful to your Honor for the suggestion, of course, with respect to his rights. I have attempted to get in touch with Attorney MacDonald, and if there is a recess this morning, I understand he is going to be in his office about ten-thirty. He was not in either last night or this morning early. I understand he stopped for a brief court session in the state courts. The testimony of Gourdin does not touch upon any matter with which Gourdin stands charged, so I think by a [68] brief session with Attorney MacDonald I will probably be able to obtain the permission.

The Court: Very well.

FRANK FLIER

called as a witness on behalf of the defendant; and being first duly sworn, testified as follows:

Q. (By the Clerk): State your name to the Court. A. Frank Flier.

Direct Examination

By Mr. MacInnis:

Q. Mr. Flier, you know the defendant, Renaldo Ferrari? A. Yes, sir.

Q. And you have known him for about what period of time?

A. Since about 1943, the early part of 1943.

Q. Upon the fifth day of January of 1946, in the Star Dust Bar or tavern here in San Francisco, did you observe the defendant Renaldo Ferrari using, inhaling, or in any fashion partaking of the drug known as heroin?

A. I do not recall the date, but as long as I have ever known Renaldo Ferrari he has never used heroin in my presence.

Q. Have you ever had any conversation with Renaldo Ferrari with respect to his usage or non-usage of heroin or any other narcotic?

A. The only conversation I have had with Renaldo Ferrari with [69] regard to heroin is when he told me to back away from it. He says, "You are fooling with dynamite."

Q. A conversation of that import took place between you and Ferrari about when?

A. The conversation of what?

(Testimony of Frank Flier.)

Q. The conversation——

A. What I just answered?

Q. Yes. He said to you to keep away from the stuff, that you were fooling with dynamite?

A. A number of times.

Q. If the same questions were put to you with respect to January 17, 1946, and January 28, 1946, which are the other two dates covering the charges against Renaldo Ferrari, would your answers be the same?

A. My answers would be—I don't recall the dates, but I know he has never used it in my presence, and has been against it as far as—to me—telling me to go to the hospital, and everything else, and to forget about it.

Q. Tell me whether or not this is true, that before this case came to trial, in the months that marked the progress of this case toward trial, have you remarked before that Renaldo Ferrari, regardless of what might be the case with respect to any other person in this charge, was himself innocent?

A. I have always maintained that he was innocent, as innocent [70] as anyone that walked the streets.

Q. Have you any personal knowledge by way of explanation to supplement what you say about Ferrari?

A. I don't quite understand you on that question.

Q. I mean, is what you say about Ferrari based upon your personal knowledge, rather than on mere opinion?

(Testimony of Frank Flier.)

A. No, I know for a fact. He has always been against it.

Mr. MacInnis: That is all.

Mr. Davis: I have no questions.

Mr. MacInnis: Call the defendant to the stand.

RENALDO FERRARI

called as a witness in his own behalf; and being first duly sworn, testified as follows:

Q. (By the Clerk): State your name to the Court. A. Renaldo Ferrari.

Direct Examination

By Mr. MacInnis:

Q. Your name is Renaldo Ferrari, is that correct? A. That is right.

Q. You live here in San Francisco?

A. That is right.

Q. At what address?

A. 144 Pinehurst Way.

Q. You have lived in San Francisco for how long? [71] A. 35 years.

Q. You were born here?

A. That is right.

Q. And have lived here all your life, is that correct? A. That is right.

Q. Are you acquainted with the bar or tavern premises known as the Star Dust? A. I am.

(Testimony of Renaldo Ferrari.)

Q. You have been acquainted with those premises about how long?

A. Ever since they opened.

Q. What was the nature of your entry at any particular time into those premises?

A. What reason, you mean?

Q. Yes.

A. Well, to drink, to meet people, talk to them—there were a lot of people that I knew there.

Q. Did you go there often?

A. Quite often.

Q. Calling your attention to the periods of time covered by the indictment in this case lodged against these various other persons, were you in and out of the Star Dust cafe or bar at various times during those months?

A. Well, I will say yes, I was in and out quite a good many times. [72]

Q. You are acquainted with all the other defendants in this case, isn't that correct? A. I am.

Q. You are reasonably friendly with all of them?

A. That is right.

Q. They are persons with whom you have had conversations on numerous occasions, is that right?

A. That is right.

Q. Have you met them on various occasions in the Star Dust Cafe? A. Yes, I have.

Q. Purely to supplement the record—some of the pictures were not identified by the witness Bruno yesterday—I am going to show you four

(Testimony of Renaldo Ferrari.)

photographs, one at a time, and ask you to state for the record what they represent. I will show you the first one.

A. This represents where the officers were supposed to have seen what was in the liquor room.

Mr. MacInnis: We ask that this picture be marked Defendant's next in order.

(The photograph in question was thereupon marked Defendant's Exhibit A-9 in evidence.)

Mr. MacInnis: I will show you a second picture.

A. This is a picture of the men's lavatory, the elevator going upstairs to the apartment, and the hallway. [73]

Mr. MacInnis: We ask that this be marked Defendant's next in order.

(The second photograph was thereupon marked Defendant's Exhibit A-10 in evidence.)

Q. (By Mr. MacInnis): I show you a third picture.

A. This is a picture showing the door to the liquor room and a door that enters to the room where the Agents were behind.

Mr. MacInnis: We ask that this be introduced as Defendant's next.

(The third photograph was thereupon marked Defendant's Exhibit A-11 in evidence.)

Q. (By Mr. MacInnis): I show you the last and fourth picture.

A. This is a picture of the men's lavatory and the hallway entrance to the back of the building.

(Testimony of Renaldo Ferrari.)

Mr. MacInnis: We ask that this likewise be introduced.

(The fourth photograph was thereupon marked Defendant's Exhibit A-12 in evidence.)

Q. (By Mr. MacInnis): Mr. Ferrari, you have seen all of the photographs which have been introduced in your case, have you not?

A. Yes, I have.

Q. Were you present when those photographs were taken? A. I was.

Q. Do you know as a matter of fact that they were taken in the month of May in 1946 by the photographer, Mr. Nathanson? [74]

A. That is right.

Q. To your knowledge, was there any change in the condition of those premises in any respect as shown by the pictures between the months of January and February and the time in May when the pictures were taken?

A. From the time that this case, as I can remember back—and this was all told to us when we were arrested—we all talked about it, and they got together and got these pictures taken as soon as possible after that. And nothing was to be changed—left there as it was when they were supposed to be there.

Q. To put it this way, do you know of your own knowledge, based upon your visits to the same premises, that they were in exactly the same situation when the pictures were taken as they were during the months of January and February?

A. Yes, they were.

(Testimony of Renaldo Ferrari.)

Q. Calling your attention first to the charge made against you concerning your alleged activities on the night of January 5 of 1946, have you any knowledge or recollection now as to where you were on that particular night as distinguished from the other two nights mentioned in the evidence?

A. In Palm Springs.

Q. By what means do you make that recollection for the Court?

A. By the cowboys, by the people that run the place. I was riding on the horses. [75]

Q. When did you go down to Palm Springs at that particular time in 1946?

A. I had been going down there for a month or so previous to that.

Q. Were you back in San Francisco at various times? A. Yes, I have.

Q. I suppose that it is true that you may well have been in San Francisco, and in the Star Dust, upon the 17th of January?

A. Could have been, yes.

Q. And that you likewise may have been in those premises on the 28th of January?

A. Could have been, yes.

Q. With respect to the 5th of January, is it your testimony that you were not in fact in San Francisco on that particular night?

A. That is right.

Q. I show you a piece of paper, which I have already displayed to Mr. Davis, which is a statement of the Rogers Ranch Stables, Palm Springs,

(Testimony of Renaldo Ferrari.)

California, addressed to "Mr. Red Ferrari, c/o Henry Gore, 1643 Beech St., San Francisco." Can you tell us what that statement is?

A. That is riding charges, like if I went out an hour, it would be a dollar and a half.

Q. What date is shown first as a riding charge, presumably for horseback riding, against you? [76]

A. January 6.

Q. What year is that? A. 1946.

Q. Have you any means of informing the Court that the date represented upon that statement is in fact 1946 and not 1947?

A. Well, the only thing I have here is the envelope, but we can write to the stables and have it verified by their bookkeeper and their cowboys.

Q. I show you an envelope bearing a cancelled stamp and postmark, and ask you what year is shown upon the envelope?

A. April 22, 5 p.m., 1946.

Q. Is that the envelope in which that statement was delivered to you? A. Yes, sir.

Q. Were you accompanied by any person upon the particular visit to Palm Springs that you have just now described? A. Yes.

Q. Who?

A. Not to Palm Springs. I drove from here to Palm Springs and stoped at Henry sister's, stayed there and had dinner, at Sierra Madre, California.

Q. About when, as best you now remember, did you leave San Francisco upon the trip that you are now narrating?

(Testimony of Renaldo Ferrari.)

A. That I am not sure. I am not positive of that.

Q. Are you positive that you drove? [77]

A. Yes, sir.

Q. About how many hours would it take you to drive to Palm Springs?

A. Well, if I went direct to Palm Springs, about twelve or thirteen hours.

Q. Calling the Court's attention again to the date shown on here, January 6, as the first day of riding, does that indicate to you in any positive fashion that you could not have been in San Francisco upon the evening before?

Mr. Davis: I object to this, your Honor. I have permitted all of this to go in up to this point, although a lot of it has been inadmissible, but I am going to object now on the ground that it calls for the opinion and conclusion of the witness.

The Court: I think that objection is good.

Mr. MacInnis: I think it is technically correct, your Honor. What I meant to elicit from the witness is a statement—he is charged with doing a certain act in the late evening of January 5, and he has a statement here showing he was riding horses in Palm Springs upon January 6. The bill does not—

The Court: Of course, that would be argumentative.

Mr. MacInnis: That is right. To cover another point:

(Testimony of Renaldo Ferrari.)

Q. The statement here is addressed to you in care of a person whose name is listed here as Henry Gore. Who is that person?

A. That is Henry Gourdin in this building. [78]

Q. Is there any particular reason for that change of name? A. No.

Q. Does this statement differentiate between those items which were charged to Henry Gourdin and those which were charged personally to you?

A. They do.

Q. In fact, are there two items upon the statement which show the name "Henry" in parenthesis? A. That is when Henry rode.

Mr. MacInnis: I would like to show the statement to the Court, if I may.

Q. And you were in receipt of that envelope and the statement contained in it before the present indictment which has now been brought to trial was lodged against you, is that correct?

A. That is right.

Mr. MacInnis: We offer the envelope and statement in evidence as Defendant's next in order, if the Court please.

Mr. Davis: If the Court please, I object to its introduction in its present form, for the reason that it is not the best evidence for the purpose offered. Counsel says he offered it for the purpose of establishing that the defendant was riding horseback in Palm Springs on January 6. It does not prove that at all. It merely proves he received a bill for somebody riding horseback. I will admit it could

(Testimony of Renaldo Ferrari.)

be admitted for the purpose of showing that he did receive a [79] bill, but not for the purpose of showing that he himself was riding horseback there on January 6.

The Court: I will allow it in evidence for whatever it is worth. I do not think I have to make any ruling as to what purpose it is admitted for.

(The statement and envelope in question were thereupon received in evidence and marked Defendant's Exhibit B.)

Q. (By Mr. MacInnis): Speaking again of the statement which is now introduced in evidence, there are certain gaps in the continuity of dates upon that statement, isn't that correct?

A. That is right.

The Court: The statement speaks for itself. I saw that.

Q. (By Mr. MacInnis): For example, between January 8 and January 21 there are no items charged against you? A. No.

Q. Is it your recollection that you probably came back to San Francisco during that interim?

A. It is.

Q. Following January 20 there is no further item charged against you personally. Does that indicate that you probably returned to San Francisco after January 20? A. Yes, it does.

Q. On the 17th day of January, the date upon which you stated you were probably in San Fran-

(Testimony of Renaldo Ferrari.)

cisco, did you go, according to your best memory, to the Star Dust Cafe? [80]

A. Yes, I think I did.

Q. What do you recall generally as the activity engaged in by yourself at those premises upon that evening?

A. Well, I have always drunk, and I always like to drink with people. I know I was well treated there, and that is where I went all the time, for that particular reason. I could go next door or across the street. But they were people I liked and people I knew were there.

Q. Would your testimony be the same with respect to the 28th of January, 1946?

A. It would.

Q. Upon either of those dates, according to your best memory, did you go into the back room of the premises? A. Possibly. I don't know.

Q. You were familiar with the room described by the Agents as the back room or liquor storage room, is that correct? A. Yes, I was.

Q. You had been in it on some occasions?

A. Yes, I have.

Q. Did you on either of those dates, January 17 or January 28 of 1946, partake by inhaling or otherwise of any quantity of the narcotic known as heroin or any other forbidden narcotic?

A. No, I did not.

Q. Are you a user of narcotics?

A. No, I am not. [81]

(Testimony of Renaldo Ferrari.)

Q. When you told the Court that you are a drinking person, to what extent to you ascribe that habit to yourself?

A. Well, I just like to drink. I go to all the bars. I have many friends. They are all bartenders, bar owners, and no other reason. I enjoy it. That is my enjoyment.

Q. You are acquainted, as you stated before, with Frank Flier, who testified here?

A. Yes.

Q. And with Vincent Bruno, who likewise was called as a witness on your behalf yesterday?

A. That is right.

Q. You are acquainted, too, with Salvatore Billemi, is that correct? A. That is right.

Q. Have you at any of the dates mentioned or any other time partaken of heroin or any other narcotic in the back liquor room of the premises known as the Star Dust?

A. No, I have not.

Mr. MacInnis: That is all.

Cross-Examination

By Mr. Davis:

Q. Mr. Ferrari, when you examined these pictures and said that they represented the exact condition, that although the pictures were taken in May of 1946, they represented the exact condition of the premises in January of 1946, I take it by that you mean the actual physical parts of [82] the build-

(Testimony of Renaldo Ferrari.)

ing. You do not mean to say that the liquor bottles and boxes were always the same during that time, do you?

A. Yes, exactly, just as they were taken.

Q. Do you mean that from January of 1946 to May, 1946, those bottles were never moved or changed at all?

A. No, because it was all rum. You can see that those things do not sell. They are dead stock.

Q. Look at all the pictures. Do you mean that during that six months' period cases, boxes and bottles were never altered in there at all, is that correct?

A. Well, when they took the pictures, some of the pictures, something had to be—for the photographer to take them, to move his stand, moved the boxes and things on this side, not moving anything where the hole has been.

The Court: That is not what the attorney means. He means were the same bottles there in May, 1946, that were there in January, 1946, in the same places.

The Witness: Yes, they look just exactly the way they were.

Q. (By Mr. Davis): The only distinction that I think ought to be added to that question, you do not mean the precise bottles, or do you mean the precise number of bottles?

A. There might have been one or two bottles which were taken out, which would be in the front. Everything would be just as it is there. [83]

Q. Just exactly the same? A. Yes.

(Testimony of Renaldo Ferrari.)

Q. Isn't it a fact, Mr. Ferrari, that on January 5, January 17 and January 28, of 1946, you were actually in the storeroom of the Star Dust Bar, and that you used heroin there by taking some of it out of a bindle on the blade of a knife and sniffing it? A. No.

Q. Have you ever been convicted of a felony?

A. No.

Q. You have not? A. No.

Mr. Davis: That is all.

Mr. MacInnis: No questions.

The Court: Is that all, Mr. Davis?

Mr. MacInnis: That is all of this witness.

Will Mr. Davis stipulate that if Mr. Henry Gourdin were called to the stand that he would testify that the defendant Ferrari was with him at Palm Springs and went horseback riding with him on the sixth day of January, 1946?

Mr. Davis: Pardon me. I didn't hear that.

Mr. MacInnes: Would you stipulate that if he were called to the stand—

The Court: Is he here now?

Mr. MacInnes: He is not in the room, your Honor. I might [84] state to the Court I am unable to discover any count against Henry Gourdin except a count which mentions February 1 of 1946. That is not a date which is connected with the charge against the defendant.

The Court: What is the charge against him in this other indictment?

Mr. MacInnis: That has nothing to do with this case.

The Court: If you are going to limit the testimony to that, I do not see any objection to your calling him.

Mr. MacInnis: If the stipulation would be accepted, that is all I am going to ask him, merely to corroborate the date of January 5. As your Honor knows, there is some confusion about that date, anyway, in view of the variance between the indictment and the proof. Will you make that stipulation?

Mr. Davis: That is, if Henry Gourdin was called, he would testify that on January 6 was horseback riding with Ferrari in Palm Springs?

Mr. MacInnis: Yes.

Mr. Davis: Oh, no, I could not stipulate to that.

The Court: Have you got him here?

Mr. MacInnis: He is supposed to be here, your Honor. I would prefer, in view of your Honor's suggestion, that I speak personally with Mr. MacDonald before subjecting him to any questions.

The Court: Do you want to take a recess now and try to [85] get in touch with Mr. MacDonald?

Mr. MacInnis: Whatever your Honor suggests.

The Court: We will take a brief recess.

(Recess.)

Mr. MacInnis: Mr. Davis has agreed, your Honor, to stipulate that if he were called to the stand as a witness, Henry Gourdin would testify that upon January 6 of 1946 he was in Palm Springs with the defendant, Renaldo Ferrari, and that the items charged in the particular stable bill

against Ferrari are true and correct representations, particularly as concerns January 6, of a horseback ride which he knows of his own knowledge Ferrari took.

Mr. Davis: I do not think I can go that far. I will stipulate that if he took the stand he would testify that he was in Palm Springs on January 6 with the defendant, but I do not think I can go further and stipulate that this document represents a true account. I could not stipulate to that.

Mr. MacInnis: I do not ask that the stipulation go to the truth of the document, but merely as to what the witness Gourdin would say as to the truth of the document.

Mr. Davis: Yes.

Mr. MacInnis: That is the form of the stipulation.

Mr. Davis: I will stipulate to that.

Mr. MacInnis: The defendant rests.

(Defendant rests.) [86]

Mr. Davis: I would like to call Mr. Grady in rebuttal, your Honor.

WILLIAM H. GRADY

called as a witness on behalf of the Government in rebuttal, and having been previously duly sworn, testified as follows:

Direct Examination

By Mr. Davis:

Q. Mr. Grady, you testified in your direct examination that you were in the premises of the

(Testimony of William H. Grady.)

Star Dust Bar about eight weeks in the months of January and February, is that correct?

A. Yes, sir.

Q. And you have testified particularly in this case that you were there on January 5, 17 and 28, is that correct?

A. Yes, sir.

Q. I am going to show you three pictures offered by the defendants which were taken in May, 1946, and which witnesses for the defendants have stated represent the true condition of the premises in the month of January, 1946, and ask you to examine them and tell us from your own knowledge whether or not those pictures are an accurate representation of the condition as you personally observed them in the month of January, 1946?

A. The picture, Defendants' Exhibit A-4, is a picture depicting a man, the lower portion, about from the pockets down, of a [87] man standing in the room, in the liquor room. It appears as though this picture had been taken through one of the observation places. If this picture was intended to depict the true and entire vision that could be obtained from any of these observation places looking into the liquor room, there have been changes made.

Q. And that picture would not be a true representation of the conditions as of January, when you were there?

A. No, sir.

Mr. MacInnis: I think, your Honor, that the answer must be supplemented, because it is in the form of a conclusion. He says there appears to have

(Testimony of William H. Grady.)

been changes made. I think he should tell us what the changes are to his knowledge.

The Witness: The view as depicted in Defendant's Exhibit 4-A is not complete. It looks as though it is a portion of the view. This picture depicts a portion of the view, but not the entire view.

Q. (By Mr. Davis): That is what you mean when you say there were some changes made?

A. That some changes must have been made, because the picture does not depict a complete view.

Mr. Davis: I will stipulate that the conclusion, "There must have been some changes made," may go out.

Mr. MacInnis: Also that there are some changes made because he is unable to tell us the changes. He draws an [88] inference.

The Court: Counsel just stipulated that that may go out.

Mr. Davis: I just stipulated anything about changes may go out. The answer merely is if that pictures purports to represent the true view, that it does not, because the view is greater than that.

The Witness: If the Defendants' Exhibits A-1 and A-5 represent the view from the inside of the liquor room towards the observation post, they do not represent a true—a true view of the bottles that were on the shelves on January 5, 17 and 28, as I recall the situation at that time.

Q. (By Mr. Davis): Would you say on January 5, 17 and 28, that there were more or fewer

(Testimony of William H. Grady.)

bottles on those shelves in front of the place than appear in these pictures?

A. There were fewer bottles.

Mr. Davis: That is all.

Cross-Examination

By Mr. MacInnis:

Q. Mr. Grady, in the long investigation which you and the other agents conducted from the vantage point which has already been described, you did not make any count of the number of bottles at any particular time, did you? A. No, sir.

Q. I suppose it would be fair to say that there were always some bottles upon those shelves, according to your best memory, [89] would it not?

A. Yes, sir.

Q. In other words, the shelves would never be bare of bottles?

A. In portions they would be bare. These pictures depict a solid wall of bottles.

Q. Showing you the picture No. A-5, which has just been shown to you, there are bare places showing?

A. That is on the lower shelf, Mr. MacInnis. I refer to the upper shelf, this portion where the view above would be.

Q. I appreciate, Mr. Grady, that neither of us are experts in the liquor business, but I suppose you would agree with me that it is common knowledge that rum, which seems to be shown as represented by some of the bottles with the label "Bac-

(Testimony of William H. Grady.)

cardi," and Sherry, represented by the label "Gonzales Sherry," would not be in as rapid currency as bottles of, let us say, ordinary bourbon; that is something you would recognize, isn't that so?

Mr. Davis: I object to that as calling for the conclusion and opinion of the witness, and furthermore, I object on the ground it is incompetent, irrelevant and immaterial. The question is not whether those bottles would move, but whether they happened to be there on that shelf or some other shelf.

Mr. MacInnis: Your Honor, the propriety of the question is established by the fact that the Government attorney cross-examined the defendant upon that subject, and the defendant, [90] without objection from him, gave answers upon the contents of that particular shelf and the reason for the bottles probably remaining constant in number.

The Court: I recall an answer of the defendant on that score. I do not know whether it came out on direct examination or was in direct response to a question, but I think the objection is good. I will sustain it. The answer to that question depends upon so many circumstances that any answer would be purely conjectural and speculative.

Q. (By Mr. MacInnis): I show you Exhibit A-1 for the defendant, which is labeled, "Photo taken directly in front of place." The shelf is 38 inches from the ground. The camera is five feet from peephole." We will agree, will we not, that that shelf contains, so far as can be seen, bottles

(Testimony of William H. Grady.)

of vermouth upon the right hand side and some substance which I think is a type of vermouth also upon the left, is that correct? A. Yes, sir.

Q. So far as can be seen that shelf is filled with bottles of vermouth?

A. I can't place that shelf exactly, Mr. MacInnis. On the lower shelf I recall papers and things like that that were there, although I will say that the majority of the observations that were made, we were concerned more with our observations from the top of the shelf and with the observations [91] underneath. As you can see, it would be impossible for us to make any observations of any value to the Government as evidence by watching a man's feet.

Q. That is precisely the import of these questions, of course, Mr. Grady, from your vantage point you could not, of course, see the labels on the bottles except such bottles as may have been turned in your direction?

A. And such bottles as had labels on the back.

Q. I see, but other than that you could not see the front labels? A. No, sir.

Q. The only changes that you would point out to the court now as appearing to your own memory between the times you made these investigations and the times these pictures were taken were those you have already cited: difference in the position of the bottles?

A. Difference in the number also, the number of bottles on the second shelf.

Q. No matter where the particular peepholes were, upon the occasion of each specific observa-

(Testimony of William H. Grady.)

tion the Agent looking through the hole would have his perspective narrowed by the fact that there were shelves beneath his observation and shelves above his observation; that is true, isn't it?

A. Now, if I follow you, I can't recall whether there were shelves above. There were no shelves above that would interfere [92] with our view. In fact, I could see the ceiling of the liquor room.

Q. From some perspective point?

A. From the different observation posts in there.

Q. Would you be able to see the ceiling and the floor at the same time?

A. Yes, yes. But there would be a portion that would be missing on account of the shelving where you could not be able to see, which would be possibly a foot wide by looking at the floor and the ceiling from the same position.

Q. In other words—I am not going to argue with you as to whether you could see certain things or you could not—but at least the vision was not perfect: there were relative degrees of obstruction at different points formed either by the position of the shelves or by such bottles as were placed upon the shelves.

A. Yes, that is correct.

Q. We agree on that, do we? A. Yes.

Mr. MacInnis: That is all.

The Court: Mr. Grady, is there any doubt in your mind that on January 5, January 7 and January 28 of 1946, you saw this defendant?

A. No, sir.

(Testimony of William H. Grady.)

Q. In this room, and saw him making use of the heroin? [93]

A. No, sir, there isn't any doubt.

Q. Is there any doubt as to your identification at all? A. No, sir.

Mr. MacInnis: May I make an objection, if the Court please? I purposely waited until the question was answered for this reason: the objection I would have made would be, of course, that the Court was asking the witness to make a comment either upon his own credibility or upon the credibility of a co-agent. But it seems to me the implication from the question and the answer goes deeper. Your Honor read, of course, without any intention, the wrong date and the witness nevertheless answered, "No."

The Court: January 5, January 17 and January 28.

Mr. MacInnis: Your Honor asked him concerning the 7th a moment ago and the witness immediately answered in the affirmative.

The Court: You may be right, but my recollection is I said January 5, January 17 and January 28. Maybe I said the 7th.

Mr. MacInnis: What I wish to point out was the witness' eagerness to answer in the negative as to any date.

The Court: I am interested in getting a direct answer from an officer of the United States as to whether there is any doubt in his mind at all

(Testimony of William H. Grady.)

as to the identification of this defendant. In my opinion, it is a perfectly proper question? [94]

Q. What is your answer to the question as to January 5, January 17 and January 28?

A. There isn't any doubt in my mind at all.

Q. (By Mr. MacInnis): Mr. Grady, were you there on the fifth of January? A. Yes, sir.

Q. And the seventeenth? A. Yes, sir.

Q. And the twenty-eighth? A. Yes, sir.

Q. You were there on all of those occasions?

A. Yes, sir.

Mr. Davis: May I ask one other question?

Q. Did you or did you not on each of those occasions or on one or more of them, if that be the case, overhear conversations between this defendant and the people who were in the room with him?

A. Yes, sir.

Q. On all of the occasions?

A. On one occasion, on the occasion of the 28th, I overheard a conversation. It was taken down at that time.

Mr. Davis: That is all.

Mr. MacInnis: No questions.

The Court: I would like to have you recall, if you are not intending to, Agent Hays. I do not know whether you [95] intended to recall him or not.

Mr. Davis: No.

The Court: The Court wishes to ask him a question.

HENRY B. HAYS

recalled as a witness on behalf of the Government and having been previously sworn, testified as follows:

The Court: Mr. Hays, did you say that you were present on all of the three occasions that were mentioned in the indictment, January 5, January 17 and January 28?

A. No, your Honor. I was present on the 17th and the 28th.

Q. On the 17th and 28th? A. Yes, sir.

Q. Is there any doubt in your mind at all as to your identification of this defendant being present in this store room on January 17 and January 28?

Mr. MacInnis: Pardon me. The same objection, your Honor, as previously introduced.

The Witness: Your Honor, I have known this defendant since 1939—

Mr. MacInnis: Now, we ask that that answer be stricken.

The Court: That may go out. I want to know whether there is any doubt in your mind.

The Witness: None whatever.

The Court: Is there any doubt in your mind as having [96] seen him on these two occasions using the narcotic heroin?

Mr. MacInnis: The Court will deem the same objection is raised.

The Witness: There is no doubt.

(Testimony of Henry B. Hays.)

The Court: That is all I have to ask. Just a moment. Maybe Counsel wishes to ask a question.

Mr. MacInnis: I have none.

The Court: Do you intend to recall Mr. McGuire?

Mr. Davis: No, your Honor.

The Court: Let Mr. McGuire take the stand.

THOMAS E. MCGUIRE

recalled as a witness on behalf of the Government, and having been previously sworn, testified as follows:

The Court: Mr. McGuire, I am not sure, but have you testified that you were present on all three occasions, January 5, January 17 and January 28?

A. No, sir, not on the 28th.

Q. You were present on January 15th and January 17th? A. January 5th.

Q. The fifth. What did I say?

The Clerk: You said the fifteenth.

The Court: January 5th and January 17th?

A. That is correct.

Q. Is there any doubt in your mind as to your identification [97] of this defendant being present in that storeroom on January 5th and 17th?

A. I am positive.

Mr. MacInnis: The same objection.

The Court: You may have the same objection.

Q. Is there any doubt in your mind that you

(Testimony of Thomas E. McGuire.)

saw him making use of the narcotic drug in the manner that you have heretofore described on those dates? A. Yes, sir, I did.

Q. There is no doubt in your mind?

A. No doubt whatsoever.

The Court. Any questions?

Mr. MacInnis: No questions.

Mr. Davis: That is all, your Honor.

The Court: Any further evidence?

Mr. MacInnis: No further evidence. I would like to make a motion. The Government rests?

Mr. Davis: Yes, the Government rests.

Mr. MacInnis: In renewing the motions which I made yesterday against the legal sufficiency of the counts lodged against the defendant Ferrari, one question comes to my mind today in a slightly different form, in view of the Court's interest in the positiveness of the recollections of the agents. I wondered why the Court did not ask Agent McGuire why the indictment in this action says that Ferrari committed a certain act upon the fifth of January in connection with Bruno.

The Court: If you want to inquire into that, I will direct the witness to take the stand again. It was not a matter I was interested in. That is why I did not ask him.

Mr. MacInnis: It is not my job to correct conflicts in the Government's evidence.

Mr. Davis: Your Honor, obviously the Agent could not testify. I prepared the indictment. If I put the wrong name in, he does not know why Bruno's name is in, rather than Flier.

(Discussion between the Court and counsel.)

The Court: I haven't the slightest doubt in this case, unless I were to conclude that the testimony of the defendant and of two men who have been convicted already under this very statute, who were both traffickers and addicts, would raise a reasonable doubt in my mind. The defendant in this case elected to waive a jury. He could have tried the case before a jury. He waived it, and that makes me the tryer of the fact, and when I am the tryer of the fact I am going to make my decision according to the same rules that I instruct jurors to render a decision on. In my opinion there is not the slightest reasonable doubt in my mind whatsoever. I could not possibly have any doubt in this case as to the evidence, and accordingly the judgment is that the defendant is adjudged [99] guilty under the three counts of the indictment.

Mr. Davis: Does the Court wish to hear from one of the agents?

The Court: Maybe Counsel wishes to make some motion.

Mr. MacInnis: I wish to make a motion in arrest of judgment as to all three findings heretofore urged, and the motion for dismissal at the end of the Government's case in chief.

The Court: I will deny the motions.

Mr. MacInnis: I wish to make and introduce at this time a motion for a new trial upon the grounds of the insufficiency of the evidence and upon all statutory grounds.

The Court: That motion is submitted, too?

Mr. MacInnis: Yes, your Honor.

The Court: Very well. I will deny that motion.

(Thereupon Mr. Grady was put upon the witness stand to testify as to the background of the defendant.)

(The Court made the following ruling:)

The Court: I will say to you, you have done your job as dilligently in every way as a lawyer should in defending his client, but in my opinion the guilt of the defendant is established beyond a reasonable doubt, and I now have the duty of imposing a judgment in this case. Inasmuch as the defendant is not an addict, there is no point in my considering the case from that point of view. Certainly it is not a case [100] which warrants probation because of the admitted nature of the activities of the defendant, the kind of people he associates with, and his general activities, as well as the conviction of an offense that, while it was not a felony, involved a type of activity not wholly dissimilar from what we have here. So therefore, it would not appear that he could properly be admitted to probation. That being the case, I do not feel that there is anything else that the Court can do except to impose a sentence in this case as required by the statute. I will sentence the defendant to one day in jail and one dollar fine on Count One of the indictment, and I will sentence him to three years imprisonment in the Federal penitentiary and one hundred dollars fine on Count Thirty-nine, and three years imprisonment and one hundred dollars fine on Count Forty of the indictment, all of the sentences to run concurrently. [101]

CERTIFICATE OF REPORTER

I, J. J. Sweeney, Official Reporter, certify that the foregoing 101 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting to the best of my ability.

/s/ J. J. SWEENEY.

[Title of District Court and Cause.]

STIPULATION TO CORRECT RECORD

It Is Hereby Stipulated by and between Hallinan, MacInnis and Zamloch and Ralph B. Wertheimer, attorneys for appellant, and Frank J. Hennessy, United States District Attorney, attorney for appellee, that the record on appeal in the above entitled matter may be corrected by the addition thereto, and inclusion therein, of the reporter's transcript for Saturday, April 13, 1946 in the matter of "United States of America vs. Frank Flier" No. 30,073 G.

HALLINAN, MacINNIS &

ZAMLOCH,

RALPH B. WERTHEIMER,

Attorneys for Appellant.

/s/ FRANK J. HENNESSY,

Attorney for Appellee.

It Is Hereby Ordered that pursuant to the above stipulation the record on appeal in the above en-

titled matter shall be corrected by the addition thereto and inclusion therein of the reporter's transcript of Saturday, April 13, 1946 in the matter of "United States of America vs. Frank Flier" No. 30,073 G.

LOUIS E. GOODMAN,
Judge of the United States
District Court.

I hereby certify that the annexed instrument is a true and correct copy of the original on file in this office.

Attest:

[Seal] C. W. CALBREATH,
Clerk, District Court of the U. S. Northern District
of California.

By /s/ M. E. VAN BUREN,
Deputy Clerk.

[Endorsed]: Filed Oct. 9, 1947.

[Endorsed]: Filed U. S. C. C. A. Oct. 13, 1947.

In the Southern Division of the United States District Court for the Northern District of California.

No. 30449 G

RENALDO FERRARI,

Defendant and Appellant,

vs.

UNITED STATES OF AMERICA,

Plaintiff and Appellee.

CLERK'S CERTIFICATE TO REPORTER'S
TRANSCRIPT

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the following Reporter's Transcript was filed on December 31, 1946 in case No. 30073 G, United States of America, vs. Frank Flier, and by Order to Stipulation to Correct Record is herewith forwarded to the United States Circuit Court of Appeals to be considered by it as part of the record on appeal herein, to wit: Case No. 30073 G—U. S. A. vs. Frank Flier. Reporter's Transcript for Saturday, April 13, 1947.

Witness my hand and seal of the District Court of the United States for the Northern District of California, this 13th day of October, 1947.

[Seal]

C. W. CALBREATH,

Clerk,

By /s/ M. E. VAN BUREN,

Deputy Clerk.

In the Southern Division of the United States District Court for the Northern District of California.

Before: Hon. Louis E. Goodman,
Judge.

No. 30,073 G

UNITED STATES OF AMERICA

vs.

FRANK FLIER,

Defendant.

Counsel Appearing:

For the United States: James T. Davis, Esq.,
Ass't U. S. Atty.

For Defendant: Leslie Gillen, Esq.

Saturday, April 13, 1946

The Clerk: United States vs. Flier.

Mr. Gillen: May it please your Honor, in this matter the defendant Flier was arrested in the City of Salinas at a gasoline service station, and at that time he was seized by two agents and searched, as set forth in the petition for the exclusion of evidence, and we believe that the search and seizure was an unlawful one, and we at this time move that the evidence be suppressed.

Mr. Davis: If your Honor please, we base our right to [1*] make the search on two theories, first of all that the agents had probable cause to make

* Page numbering appearing at top of page of Reporter's certified Transcript of Record.

the search and seizure, and, secondly, that they made this search incidental to an arrest, that they had probable cause to make the arrest, and I have produced an agent today to testify as to the background and inform your Honor as to probable cause that they had.

The Court: That is the issue, probable cause?

Mr. Davis: Yes, I will call Mr. Grady.

WILLIAM H. GRADY

called as a witness for the United States; sworn.

Mr. Davis: Mr. Grady, you are an agent of the Federal Bureau of Narcotics, are you not?

A. Yes.

Q. Do you know this defendant, Frank Flier?

A. Yes.

Q. In the interest of saving time, prior to the day of his arrest on March 2, 1946, at Salinas, had you observed him at any previous time in connection with a narcotic transaction? A. Yes.

Q. Will you state to the court what you observed on the first occasion?

A. On August 20, 1945, through an informer, I made a purchase of heroin from the defendant, Flier.

Q. You say you made a purchase of heroin through an informer? A. Yes.

Q. You made the purchase using an informer?

A. Through an informer, the informer under my direction made the purchase. [2]

(Testimony of William H. Grady.)

Mr. Gillen: I move that the answer that through an informer he made the purchase be stricken out as hearsay.

The Court: I will sustain the objection and strike out the answer.

The Witness: On the evening of August 20, 1945, I took an informer to, I drove with an informer to the Star Dust Bar, on Larkin and Sutter Streets. I searched this informer and gave him \$50 of identified currency from the official advance fund. I observed this man enter the Star Dust Bar and approach Flier; Flier was standing in front of the bar; this man and Flier walked back to the rear of the bar, returned shortly, and the man walked down Sutter Street to Polk Street, around the corner of Polk Street, where I met him, and again searched him, and he did not have the \$50 in currency, and he had a bindle of heroin.

Mr. Gillen: I move that the entire answer, the previous answer and this answer be stricken out as hearsay.

The Court: We are dealing with the matter of probable cause and not proof of the criminal act.

Mr. Gillen: I think, however, your Honor will agree with me that there is a gap in the inspector's testimony; he said that he saw the informer enter the bar, or saw him approach the accused, the defendant Flier, he saw the defendant walk to the end of the bar and subsequently saw the informer leave the bar and walk down Sutter Street to the corner, where he [3] searched him. There is a gap there.

(Testimony of William H. Grady.)

Q. Did you have the informer under your surveillance at all times?

A. No. There was a brief period of about two minutes while the informer and Flier were in the rear of the bar where they were not under my surveillance.

Mr. Gillen: I submit that there is a gap.

The Court: Did the informer tell you that he had sold heroin to him? A. Yes.

The Court: That is hearsay but this is probable cause, so that I will allow it.

Mr. Davis: Did anything occur—did you observe the defendant the night before the defendant's arrest on March 2? A. Yes.

Q. Where did you observe him and what occurred at that time?

A. On the night of March 1 I saw the defendant Flier and Ferrera and Bruno in a liquor room in the rear of the Star Dust Bar; I was in a storeroom that was owned by the apartment house at 1112 Larkin Street. After Flier, Ferrara and Bruno entered this room they held a conversation; Bruno said, "Well, what have we got?" And Flier said, "We have got \$2080," and he said, "We have got 3¼ ounces left."

Q. What date was this?

A. March 1, the day before the arrest. Flier then counted the money or shuffled the money through his hand and said, "This will be about \$700 apiece," and I observed him hand the money to Bruno and to Ferrera. [4] Ferrera then left

(Testimony of William H. Grady.)

the liquor room and Bruno said, "I don't suppose I will see you again before you leave," and Flier said no, he said, "I am going down to Los Angeles." He said, "I am going to take the cure." He said, "I can't take the cure around town, because these other fellows I have been running around with are always offering me heroin." Bruno said, "How are you fixed?" And Flier said, "I have money enough, I am going to take enough stuff so I will be comfortable on the ride when I ride down." So at that time they left the liquor storeroom. The next morning Agent Hayes and myself watched Flier, and we observed Flier loading bags in the back of the car, and after driving around town he went on the highway, and we proceeded ahead of him on the highway to approximately between Palo Alto and San Jose, and waited for them, as they drove on down the highway we followed them, and when they stopped in the service station in Salinas we placed the defendant Flier under arrest and removed a package of heroin from his left hand shirt pocket.

Mr. Davis: That is all. We submit the motion.

Cross-Examination

By Mr. Gillen:

Q. Mr. Grady, on the night of August 20 you said that an informer visited the Star Dust Bar. What time of night was that?

A. About 8:30.

Q. What was the name of that informer?

(Testimony of William H. Grady.)

Mr. Davis: I object to that and direct the witness not [5] to answer that on the ground that he does not have to disclose the name of the informer.

The Court: I will sustain the objection.

Mr. Gillen: Was it a man who was acquainted with the defendant Flier, or a woman?

Mr. Davis: I make the same objection.

The Court: The objection is sustained.

Mr. Gillen: You say that you searched the informer? A. Yes.

Q. Did you? A. Yes.

Q. Was it a man or a woman informer?

A. It was a man.

Q. You personally made the search?

A. Yes.

Q. Did you remove all of his clothing?

A. No.

Q. You did not search his body?

A. No, I searched all of his clothing.

Q. You did not search his body? A. No.

Mr. Davis: If your Honor please, I do not like to interrupt but I think we are going very far afield. We only have to show probable cause in the mind of the agent.

Mr. Gillen: Bindles of narcotics have been concealed on the body.

The Court: Even if the narcotic agents were mistaken, even if he did not make a thorough search, the only problem that we are concerned with here is the good faith that arises from what is called Probable cause; even if he made a mistake,

(Testimony of William H. Grady.)

it would not destroy probable cause. Unlawful search and seizure has to do with some unlawful act or something that is beyond the good faith of a public officer. I do not see that it makes any difference whether he took this individual around and had him fluoroscoped to find out whether he had this stuff concealed somewhere.

Mr. Gillen: There is a gap between August 20 and March 1; something happened on August 20th which the agent testified to, a transaction which made him suspicious and gave him probable cause to act upon.

The Court: Did you search the body? I don't know what counsel means by that.

A. I did not search his body. I searched the clothing on his body.

Mr. Gillen: You say you went through his pockets? A. Yes.

Q. You did not remove his clothes?

A. No.

Q. Then you drove with him to this location on Sutter Street, the Star Dust Bar, is that correct?

A. Yes.

Q. And you say you saw him enter the bar?

A. Yes.

Q. Where were you?

A. I was about fifteen feet behind him; as he walked to the bar, the bar was open and I stood in the entrance to the bar.

Q. Now, from the time that he entered the bar, you being fifteen feet behind him, he was out of your sight?

(Testimony of William H. Grady.)

A. No, I don't think he was. I was ten or fifteen feet behind him as he walked to [7] the bar, and I walked immediately up.

Q. As he turned into the bar off the street, while he was in the street, he was in your sight?

A. Yes.

Q. When he turned into the bar you were still ten or fifteen feet behind him, is that correct?

A. I think, counsel, you will find that you walk faster on the street than you do as you enter a bar.

Q. I am asking if when he turned into the bar and you were still ten or fifteen feet behind him, you lost sight of him, did you not? A. No.

Q. You never did lose sight of him momentarily while he entered the bar while you were on the street ten or fifteen feet behind him?

A. I can see your point, you are placing me fifteen feet behind him.

Q. I am only placing you fifteen feet behind him because that is what you said.

A. As he approached the bar I was fifteen feet behind from there.

Q. From what angle did he approach the bar?

A. He approached the bar from Larkin Street.

Q. In other words, he had to walk in an easterly direction, is that correct, on Sutter Street and turn right to the bar?

A. Yes, I believe that is correct.

Q. In other words, he walked on Larkin Street and made a right hand turn into the bar?

A. I am not familiar with directions up there. On Larkin Street he was walking east [8] from Bush, coming down from Bush.

(Testimony of William H. Grady.)

The Court: You are mistaken, the blocks run approximately north and south.

A. Then if Larkin runs north and south, he was walking from Bush Street toward Sutter; that would be south.

Mr. Gillen: And the Star Dust is where with respect to the corner of Larkin?

A. The door is probably about fifteen feet from the corner.

Q. Fifteen feet to the easterly corner of Larkin Street? A. Yes.

Q. Where were you walking?

A. I was walking on the sidewalk behind the man.

Q. On the same side of the street?

A. Yes.

Q. Did you observe how many people were in the bar at the time that the informer entered?

A. I didn't pay special attention to the other people in the bar. There are two rooms in this bar and I could not say how many were in the other part of the bar, but in the part where my informer was there were about, I would say, perhaps five or eight people.

Q. And the defendant Flier was behind the bar?

A. No, the defendant Flier was out where the people were; he was not working behind the bar.

Q. In other words, the defendant Flier was standing at the patrons' side of the bar, outside of the bar? A. Yes.

Q. Was he commingling with the five or eight people that you [9] observed there?

(Testimony of William H. Grady.)

A. No, not exactly commingling with them; he was standing there, I believe that he was standing there.

Q. Talking to some people?

A. Yes, I believe he was talking to some people at the bar.

Q. At the time the informer passed over the threshold of the bar how far would you say you were behind him?

A. I would say that I was probably eight or ten feet.

Q. About eight or ten feet behind him?

A. Not behind him, on the side; as the informer turned to walk in the door of the bar I walked from the outside of the sidewalk to the door of the bar.

Q. Were you in a position of having a full view of the bar at all times, the interior of the bar at all times as you approached the bar?

A. No, I could see the informer; I couldn't see the bar.

Q. Could you see the entire interior of the place?

A. No.

Q. You couldn't? A. No.

Q. It was not until you got right in front of the door of the bar that you could see the interior and he was there, isn't that true?

A. I was not really interested in the interior of the bar; I was interested in the informer and the defendant Flier.

Q. But you would have to see the interior of the bar in order to keep the informer in sight?

A. Not all of the bar.

(Testimony of William H. Grady.)

Q. Not all of the bar, but you would have to see the interior; [10] I am asking you if you had a full view of the interior at all times from the time the informer entered.

A. You mean could I see the entire floor surface of the bar?

Q. The interior, where Flier and the informer were standing.

A. I could see the informer and Flier, if that is your idea. I could see the informer at all time except the period of time that they walked into the rear; when they went to the rear they were out of my view.

Q. When they went to the rear you lost complete sight of them?

A. I lost complete sight of them.

Q. There were other people standing between you and the informer and Flier, is that correct?

A. No; they went through a door.

Q. They went through a door? A. Yes.

Q. And out of your sight?

A. Out of my sight.

Q. Did you have an opportunity to observe who was in the room into which the informer and Flier went out of your sight? A. No.

Q. You did not? A. No.

Q. You attempted to gauge the amount of time that the informer was out of sight? A. Yes.

Q. You said it was, I believe, two minutes?

A. About two minutes.

(Testimony of William H. Grady.)

Q. Did you time it with your watch.

A. No.

Q. That is merely your guess?

A. That is right.

Q. It might have been a longer time?

A. It might have been shorter. [11]

Q. It might have been shorter? A. Yes.

Q. It might have been longer?

A. It might have been longer.

Q. That is your recollection now of how long that was on August 20, 1945?

A. My recollection of the time, that is the best I can recall it.

Q. You did not see the defendant Flier pass any contraband of any kind to the informer?

A. No.

Q. It did not come to your attention that the identified currency which was given the informer was ever in the possession of Flier, is that correct?

A. That is correct.

Q. That was never established by you?

A. No.

Q. So that all you were going on at that time to establish probable cause was hearsay as to whom he gave the money, the identified money, and from whom he received the contraband, is that correct?

A. The informer said that he went in the liquor room and returned with a couple of bindles of heroin, and asked him how much he wanted, and he said he only wanted one.

(Testimony of William H. Grady.)

Q. You say on March 1 you had hidden yourself in a room behind the Star Dust Bar, is that correct? A. Yes.

Q. Were you alone at that time? A. Yes.

Q. About what time of night was this?

A. About 8:50.

Q. 8:50 at night? A. Yes.

Q. Did I understand your testimony to be that you saw Flier, Brunow and Ferrera?

A. I did. [12]

Q. In the rear room of the Star Dust Bar?

A. Yes, I did.

Q. You were in another room than that rear room, were you not? A. Yes.

Q. You were not in the same room that the defendant and the other men that you have mentioned were? A. That is right.

Q. You say you saw them. How did you see them?

A. I saw them in an opening in the wall; there were three or four openings in the wall there about $3\frac{1}{2} \times 7$ inches, and I was looking through those openings.

Q. Is that a wooden wall or a plastered wall?

A. The top part is a plastered wall, the bottom part is a wooden wall with sort of chicken wire over it.

Q. Did you make those openings in the wall?

A. Those openings were made in the wall originally, I believe two of those openings had small boards nailed over them from the side of the room

(Testimony of William H. Grady.)

that I was in, and I removed the two boards and the openings between them originally were there at the time.

Q. And the agents bored holes in the wall?

A. There were no holes bored. On two of them there were boards that had been nailed over, and in building the wall it appeared that they had short boards that had not come together, and it left an opening where the boards were about seven inches apart.

Q. Slats?

A. No, not slats, openings where the boards, 3½ inches wide, came up so far—it looked to me as if when the man was building the place the boards came up so far [13] and then the other piece of board—that he did not have any length board to fit it so he put another board in there, and it happened to be several inches short.

Q. You removed those boards?

A. No. Then in a few places in the building they took little pieces of boards that appeared to be, I would say, probably off of the top of apple boxes, boards of that type that were tacked over the top of those two holes; two of those holes did not have anything over them.

Q. Two of those holes you say were just open, nothing had been done to cover them up?

A. Yes.

Q. And the other two had boxwood or some material of that kind over them and you took those off?

A. Yes.

(Testimony of William H. Grady.)

Q. Did you do that while you were making your observation that you have described here now?

A. Oh, no, we saw the defendant, I saw the defendant and heard his conversation over the period of approximately two minutes.

Q. My question was, did that occur while you were making your observation, the removal of the boards? A. No.

Q. They had been removed previously, is that correct? A. Yes.

Q. At some prior time? A. Yes.

Q. You say that at that time you were in a position to observe the defendant and the other two men you have mentioned? A. Yes.

Q. Were you in a position to hear their conversation without [14] the aid of any listening device?

A. Yes.

Q. You did not have a Dictaphone?

A. I did not use a Dictaphone at that time.

Q. How far away were you from the men that you heard talking, the defendant and the other two men? A. Possibly six feet.

Q. You were on the other side of the wall six feet away?

A. Not six feet from where I was standing—the defendants were standing between four and six feet, I would say.

Q. Between four and six feet? A. Yes.

Q. Were you able to make your observations from one opening, or did you have to move from one to the other?

A. I moved, I used two different openings.

(Testimony of William H. Grady.)

Q. Now, you testified that the morning following what you did on March 1st you and another agent placed the defendant Flier under observation from the time he left his home, is that correct?

A. Yes.

Q. You saw him load his car with baggage or luggage and start out with his wife for presumably Los Angeles, is that right?

A. Yes. We observed him in the morning about 7:30; he got in the car and he and his wife went out to the Stanford Hospital, returned to the house, and shortly thereafter they came down and loaded the baggage into the car and then after that we followed them down to the Pacific Gas & Electric Company, over toward North Beach, where they passed from my view, we got caught in the traffic, and then we went out on the highway [15] and waited for them to come along.

Q. What point on the highway?

A. We did not stop at any one point for any length of time, we went down to Palo Alto, we stopped at Palo Alto for a while, and then rode leisurely along the highway, and when the defendant passed us we then followed him.

Q. At what distance did you keep them under observation, if you did, between the point where you picked them up on the highway and Salinas?

A. Well, I think we followed, we did not have any special distance, we did not pass them, or anything like that.

(Testimony of William H. Grady.)

Q. Let me put it this way, maybe my question was not clear: At what point did you and your partner pick up the Flier car and again have them under observation on the highway?

A. Well, the observation was in the vicinity of San Jose.

Q. In the vicinity of San Jose? A. Yes.

Q. Did you then follow the car? A. Yes.

Q. You followed it from San Jose to Salinas?

A. Yes.

Q. At Salinas the defendant was walking across the property of the service station at the time the arrest was made, is that correct?

A. No, that is not correct.

Q. What is correct.

A. As we drove into the service station the defendant was still in his car, and the defendant, as I left our car, had not left his car yet; I was about fifteen feet from the door of the defendant's car, and as I walked over to him he left his car and he was standing on the running [16] board of the car, and as I approached him he stepped out of the car and closed the door, and at that time I placed him under arrest.

Q. In what manner did you place him under arrest?

A. I took my handcuffs out and put the handcuffs on him, and I told Flier he was under arrest, and I led him over to our car, which was about fifteen feet away, and there made a preliminary search, and found this heroin, package of heroin, in the left-hand shirt pocket.

(Testimony of William H. Grady.)

Q. Is that all of the contraband that you found, either on the person of the defendant or in any of his luggage, or in the car, at all?

A. Yes, that is all.

Q. Wasn't your conversation there at the time that the search was made with relation to something that was put into the defendant's pocket by one of you agents?

A. No; I said, "How did this stuff get here?" And he said, "Well, I don't know." So I said, "Do you think we put it there?" And he said, "No, some of the people that I have been running around with probably put it in there, I don't know how it got there, but I don't think you put it there."

Q. The arrest was made, as I understand it, when the defendant was standing out on the ground in the service station and you pounced on him and immediately put your handcuffs on him without making any announcement of any kind, is that correct?

A. No. [17]

Q. What is correct?

A. I told the defendant we were Federal officers.

Q. You told him that after you had handcuffed him, isn't that correct?

A. No, we approached him and told him we were Federal officers and put the handcuffs on him.

Q. You told him you were Federal officers before you laid hands on him at all?

A. At the time that we were putting handcuffs

(Testimony of William H. Grady.)

on him; we did not announce our identity before, although we had reason to believe that the man knew who we were, anyway.

Q. How far were you behind this car as the defendant entered the City of Salinas?

A. I would say possibly 150 feet, varying possibly 50 feet each way.

Q. You had heard him say the night before, as you have testified, that he was on his way to Los Angeles to take the cure? A. Yes.

Mr. Gillen: I think that is all.

Mr. Davis: That is all. I submit the motion.

The Court: Have you any evidence to submit in support of the petition?

Mr. Gillen: No, but I believe that the showing of the Government here falls far short of showing possible cause for making the arrest and making the search and seizure. I believe that the arrest was incidental to search and seizure and not the search and seizure incidental to the arrest.

I submit the motion.

The Court: The motion will be denied. [18]

CERTIFICATE OF REPORTER

I, Edward W. Lehner, Official Reporter, certify that the foregoing 15 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting, to the best of my ability.

[Endorsed]: No. 11656. United States Circuit Court of Appeals for the Ninth Circuit. Renaldo Ferrari, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed August 18, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

At a Stated Term, to wit: The October Term 1946, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Friday, the first day of August, in the year of our Lord one thousand nine hundred and forty-seven.

Present: Honorable Francis A. Garrecht,
Senior Circuit Judge, Presiding,
Honorable William Healy, Circuit Judge,
Honorable William E. Orr, Circuit Judge.

No. 11656

RENALDO FERRARI,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORDER SETTING ASIDE DEFAULT OF APPELLANT, AND EXTENDING TIME TO FILE TRANSCRIPT OF RECORD

Upon consideration of the motion of appellant, and stipulation of Mr. Frank J. Hennessy, United States Attorney, counsel for appellee, and good cause therefor appearing,

It Is Ordered that the default of the appellant in failing to file his record on appeal within forty

days from filing of notice of appeal be, and the same is hereby set aside and the appellant may have to and including August 18, 1947, within which to file the certified transcript of record on appeal herein.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11656

RENALDO FERRARI,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee,

DESIGNATION OF THE PORTIONS OF THE
RECORD DESIRED TO BE PRINTED
AND STATEMENT OF POINTS UPON
WHICH THE APPELLANT INTENDS TO
RELY UPON APPEAL

The appellant desires that all of the record herein be printed save and except the exhibits herein.

Statement of Points Upon Which Appellant
Intends to Rely on Appeal

Appellant intends to rely upon the following points upon appeal:

(1) That the evidence was insufficient to support the respective allegations in the indictment, and hence, insufficient to sustain any verdict or judgment against said Renaldo Ferrari.

(2) That there was a fair variance between the allegation in the first count of said indictment and the evidence introduced thereon.

(3) That the trial judge, Honorable Louis E. Goodman, upon April 22, 1947, heard and received evidence of and concerning defendant Renaldo Ferrari, in another cause, to wit: The United States of America, plaintiff, vs. Frank Flier, bearing the same title and number, during a proceeding had after an entry of a plea of guilt by said Frank Flier at a time when said Renaldo Ferrari was not present nor given an opportunity to cross-examine; nor was said testimony, as so rendered in the matter of Frank Flier, repeated in the case in chief against Renaldo Ferrari.

(4) No evidence whatsoever was submitted in support of that phase of the respective count, reading as follows: “* * * Said heroin had been carried into the United States of America contrary to law, as said defendants then and there knew.”

HALLINAN, MacINNIS &
ZAMLOCH,

/s/ RALPH B. WERTHEIMER,
Attorneys for Appellant.

Receipt of a copy of within document Admitted
this 9th day of October, 1947.

/s/ FRANK J. HENNESSY,
Attorney for Appellee.

[Endorsed]: Filed Oct. 9, 1947.